

TABLE OF CONTENTS

First Special Session - 1985 (9-19-85 through 9-25-85)

1985 First Special Session cover page	i
1985 First Special Session Officers of the Legislature	ii
1985 First Special Session Legislative Members	iii
1985 First Special Session Rules of the Legislature	vi
1985 First Special Session Journal	1-79
1985 First Special Session Chronology of Bills	81
1985 First Special Session Legislative Bills and Constitutional Amendment Resolutions Introduced	
By Senators	83
By Committee	none
1985 First Special Session Bills and Resolutions	
Heard by Committee	84
1985 First Special Session Summary of Legislation	85
1985 First Special Session General Index	86
1985 First Special Session Subject Index	none
1985 First Special Session Section Index	none

Second Special Session - 1985 (10-17-85 through 11-15-85)

1985 Second Special Session cover page	vii
1985 Second Special Session Officers of the Legislature	viii
1985 Second Special Session Legislative Members	ix
1985 Second Special Session Rules of the Legislature	xii
1985 Second Special Session Journal	1-262
1985 Second Special Session Chronology of Bills	263
1985 Second Special Session Chronology of Constitutional Amendment Resolutions	277
1985 Second Special Session Legislative Bills and Constitutional Amendment Resolutions Introduced	
By Senators	278
By Committee	282
1985 Second Special Session Bills and Resolutions	
Heard by Committee	283
1985 Second Special Session Summary of Legislation	285
1985 Second Special Session General Index	286
1985 Second Special Session Subject Index	1-10
1985 Second Special Session Section Index	1-3

LEGISLATIVE JOURNAL
OF THE
STATE OF NEBRASKA
Volume 1

EIGHTY-NINTH LEGISLATURE
FIRST SPECIAL SESSION

1985

Convened September 19, 1985

Adjourned September 25, 1985

LINCOLN, NEBRASKA

Compiled

Under Authority of the Legislature

by

PATRICK J. O'DONNELL, CLERK

OFFICERS OF THE LEGISLATURE

Donald F. McGinley, (Lt. Governor), President Lincoln
 William E. Nichol, Speaker Scottsbluff
 Patrick J. O'Donnell, Clerk Lincoln
 Richard Brown, Assistant Clerk Lincoln
 Robert E. Palmer, Chaplain Coordinator Lincoln
 Lottie Henderson, Mail Room Supervisor Lincoln
 Norman J. Hubertus, Sergeant at Arms Lincoln

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 Shirley Marsh, Lincoln Vice Chairperson
 William E. Nichol, Scottsbluff Speaker
 William Barrett, Lexington Member-at-large
 Ernie Chambers, Omaha Member-at-large
 John W. DeCamp, Neligh Member-at-large
 Patricia S. Morehead, Beatrice Member-at-large
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LEGISLATURE

MEMBERS

Dist.	Name	Address	Occupation	Counties
1	R. Wiley Remmers.....	Auburn	Farmer	Johnson, Nemaha, Otoe*, Pawnee, Richardson
2	Calvin F. Carsten.....	Avoca	Retired Farmer	Cass, Otoe*
3	Emil E. Beyer, Jr.	Gretna	Real Estate Investor	Sarpy*, Douglas*
4	Gary E. Hannibal	Omaha	Contractor.....	Douglas*
5	Bernice Labedz	Omaha	State Senator.....	Douglas*
6	Peter Hoagland	Omaha	Attorney.....	Douglas*
7	Timothy J. Hall.....	Omaha	Development Director	Douglas*
			U.C.S.S. (United Catholic Social Services)	
8	Vard R. Johnson.....	Omaha	Attorney.....	Douglas*
9	Marge Higgins	Omaha	State Senator.....	Douglas*
10	Carol McBride Pirsch	Omaha	Community Relations	Douglas*
			Supervisor	
11	Ernie Chambers	Omaha	Barber	Douglas*
12	Chris Abboud.....	Ralston.....	Attorney.....	Douglas*
13	Daniel C. Lynch.....	Omaha	Vice President, Consumer	Douglas*
			Affairs, Blue Cross/ Blue Shield of NE	
14	Ron Withem	Papillion	Executive Director.....	Sarpy*
			MCAO	
15	Lowell C. Johnson	North Bend	Retired Engineer/.....	Dodge*
			Farmer/Businessman	

Dist.	Name	Address	Occupation	Counties
16	James E. Goll.....	Tekamah	President-Tekamah	Burt, Cuming*, Thurston, Washington
17	Gerald A. Conway.....	Wayne	Finance Professor/ Consultant	Dakota, Dixon, Wayne*
18	Harry B. Chronister.....	Schuyler.....	Agri-Business	Colfax, Cuming*, Dodge*, Stanton
19	Elroy M. Hefner	Coleridge.....	Businessman.....	Cedar, Knox, Pierce, Wayne*
20	Glenn A. Goodrich.....	Omaha.....	Electrical Contractor.....	Douglas*
21	Richard Peterson	Norfolk	Farmer/Beekeeper/ Businessman	Madison
22	Lee Rupp	Monroe	Public Relations/ Ag. Real Estate	Boone*, Nance, Platte*
23	Loran Schmit	Bellwood	Farmer	Butler, Platte*, Saunders
24	Harold F. Sieck.....	Pleasant Dale	Farmer	Polk*, Seward, York
25	Jerome Warner	Waverly.....	Livestock/Farming	Lancaster*
26	Don Wesely	Lincoln	Businessman.....	Lancaster*
27	Bill Harris	Lincoln	Oil Exploration	Lancaster*
28	Chris Beutler.....	Lincoln.....	Attorney/President of Beutler Title	Lancaster*
29	Shirley Marsh	Lincoln.....	State Senator.....	Lancaster*
30	Patricia S. Morehead	Beatrice	Homemaker/ State Senator	Gage, Jefferson*
31	Jerry Chizek.....	Omaha.....	Manager, Public Affairs.....	Douglas*
32	Donald Eret	Dorchester.....	Farmer	Fillmore, Jefferson*, Saline, Thayer
33	Jacklyn Smith.....	Hastings	Public Relations	Adams
34	Rod Johnson.....	Sutton.....	Farming/Cattle Feeding.....	Clay, Hall*, Hamilton, Merrick, Polk*
35	Arlene Nelson	Grand Island	Agri-Bookkeeper.....	Hall*
36	Ray E. Lundy	Kearney.....	Retired City Manager.....	Buffalo*, Hall*
37	Jerry D. Miller.....	Davenport	Farmer	Buffalo*, Franklin, Kearney, Nuckolls, Webster

Dist.	Name	Address	Occupation	Counties
38	Tom Vickers.....	Farnam.....	Farmer/Rancher.....	Frontier, Furnas, Gosper, Harlan, Lincoln*, Red Willow
39	William E. Barrett	Lexington.....	Real Estate/Insurance.....	Dawson, Phelps
40	John W. DeCamp	Neligh.....	Attorney/Real Estate.....	Antelope, Boone*, Boyd, Holt
41	Carson H. Rogers	Ord.....	Broker & Developer.....	Custer*, Garfield, Greeley, Hall*, Howard, Loup, Sherman, Valley, Wheeler
42	James E. Pappas	North Platte	Consultant.....	Lincoln*
43	Howard A. Lamb.....	Anselmo	Rancher.....	Blaine, Brown, Cherry, Custer*, Hooker, Keya Paha, Logan, McPherson, Rock, Thomas
44	Rex Haberman.....	Imperial.....	State Senator.....	Arthur, Chase, Deuel, Dundy, Grant, Hayes, Hitchcock, Keith, Lincoln*, Perkins
45	D. Paul Hartnett.....	Bellevue.....	College Professor	Sarpy*
46	David Landis	Lincoln	Teacher/State Senator.....	Lancaster*
47	Dennis Baack.....	Dix	Farmer	Banner, Cheyenne, Garden, Kimball, Morrill, Scotts Bluff*
48	William E. Nichol.....	Scottsbluff	Retired.....	Scotts Bluff*
49	Sandra K. Scofield.....	Chadron	Career Counselor/.....	Box Butte, Dawes, Sheridan, Sioux
			Consultant/Farmer	

Clerk

Patrick J. O'Donnell Lincoln

RULES OF THE LEGISLATURE

Rules in effect at the commencement of the Eighty-Ninth Legislature, First Special Session, 1985, are the same rules in effect at the commencement of the Eighty-Ninth Legislature, Second Session, 1986.

FIRST DAY - SEPTEMBER 19, 1985**LEGISLATIVE JOURNAL****EIGHTY-NINTH LEGISLATURE
FIRST SPECIAL SESSION****FIRST DAY**

Legislative Chamber, Lincoln, Nebraska
Thursday, September 19, 1985

Pursuant to a proclamation by His Excellency, Robert Kerrey, Governor of the State of Nebraska, the Eighty-Ninth Legislature, First Special Session assembled in the West Legislative Chamber of the State Capitol, at the hour of 9:01 p.m., Thursday, September 19, 1985, and was called to order by President McGinley.

PRAYER

The prayer was offered by Senator Carsten.

PRESENTATION OF COLORS

Presentation of colors by the Nebraska Air National Guard Ceremonial Unit.

DECLARATION

Members of the Legislature:

Pursuant to a proclamation issued by the Honorable Robert Kerrey, Governor of Nebraska, we are here and now assembled in the 89th Legislature, 1st Special Session of the Nebraska Legislature. I, as President, declare that we are now open for the transaction of business.

(Signed) Donald F. McGinley
President

ROLL CALL

The roll was called and the following members were present:

Abboud, Chris	Hannibal, Gary E.	Nelson, Arlene B.
Baack, Dennis	Harris, Bill	Nichol, William E.
Barrett, William E.	Hartnett, D. Paul	Pappas, James E.
Beutler, Chris	Hefner, Elroy M.	Peterson, Richard
Beyer, Emil E., Jr.	Hoagland, Peter	Pirsch, Carol McBride
Carsten, Calvin F.	Johnson, Lowell C.	Remmers, R. Wiley
Chizek, Jerry	Johnson, Rod	Rogers, Carson
Chronister, Harry B.	Labeledz, Bernice	Rupp, Lee
Conway, Gerald A.	Lamb, Howard A.	Schmit, Loran
DeCamp, John W.	Lundy, Ray E.	Sieck, Harold F.
Eret, Don	Lynch, Daniel C.	Smith, Jacklyn
Goll, James E.	Marsh, Shirley	Warner, Jerome
Goodrich, Glenn A.	Miller, Jerry D.	Wesely, Donald
Haberman, Rex	Morehead, Patricia S.	Withem, Ron
Hall, Tim		

Mr. Vickers and Mrs. Higgins were excused; and Messrs. Chambers, V. Johnson, Landis, and Ms. Scofield were excused until they arrive.

PROCLAMATION

BY VIRTUE OF THE AUTHORITY VESTED in the Governor by Article IV, Section 8, of the Constitution of the State of Nebraska, I, Robert Kerrey, as Governor of the State of Nebraska, believing that an extraordinary occasion has arisen, DO HEREBY CALL the Legislature of Nebraska to convene in extraordinary session at the State Capitol on September 19, 1985, at 9:00 p.m., for the purpose of considering the sole subject:

1. Transferring \$8.5 million plus any accrued interest from Suspense Fund #7999 to the Commonwealth Trust Fund #6191 in order to appropriate that sum, so that tort claim #4-302 identified and approved in LB 713 of the 1st Session of the 89th Legislature may be paid.

I direct that members of the Legislature of the State of Nebraska be notified of the convening of this extraordinary session by presenting to each of them a copy of this Proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nebraska to be affixed this 18th day of September, 1985.

(Signed) ROBERT KERREY
Governor

(SEAL) Attest:

(Signed) ALLEN J. BEERMANN
Secretary of State

CERTIFICATE

State of Nebraska
Department of State

I, Allen J. Beermann, Secretary of State of the State of Nebraska do hereby certify that the attached represents a true and correct roster of members of the Nebraska Unicameral Legislature serving in the Eighty-ninth Legislature, First Extraordinary (Special) Session, called by the Governor to commence on September 19.

Further, I hereby certify that all members whose names appear on the roster with the district designation have been duly elected or appointed to serve as a member of the Legislature in the Eighty-ninth Legislature, First Extraordinary (Special) Session.

Finally, I hereby certify that all election or appointment records are a matter of public record in the office of Secretary of State.

Further, I saith not.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State of Nebraska.

Done at Lincoln this nineteenth day of September in the year of our Lord, one thousand nine hundred and eighty-five.

(SEAL)

Allen J. Beermann,
Secretary of State
Ralph Englert,
Deputy

1	R. Wiley Remmers	November 6, 1984
2	Calvin F. Carsten	November 2, 1982
3	Emil E. Beyer, Jr.	November 6, 1984
4	Gary E. Hannibal	November 2, 1982
5	Bernice Labedz	November 6, 1984
6	Peter Hoagland	November 2, 1982
7	*Tim Hall (Appointed, Elected)	November 6, 1984

8	Vard R. Johnson	November 2, 1982
9	Marge Higgins	November 6, 1984
10	Carol McBride Pirsch	November 2, 1982
11	Ernie Chambers	November 6, 1984
12	Chris Abboud	November 2, 1982
13	Dan Lynch	November 6, 1984
14	**Ron Withem (Appointed, elected)	November 6, 1984
15	Lowell C. Johnson	November 6, 1984
16	James E. Goll	November 2, 1982
17	Gerald Conway	November 6, 1984
18	Harry B. Chronister	November 2, 1982
19	Elroy M. Hefner	November 6, 1984
20	Glenn A. Goodrich	November 2, 1982
21	Richard Peterson	November 6, 1984
22	Lee Rupp	November 2, 1982
23	Loran Schmit	November 6, 1984
24	Harold F. Sieck	November 2, 1982
25	Jerome Warner	November 6, 1984
26	Don Wesely	November 2, 1982
27	***Bill Harris (Appointed, Elected)	November 6, 1984
28	Chris Beutler	November 2, 1982
29	Shirley Marsh	November 6, 1984
30	Patricia S. Morehead	November 2, 1982
31	****Jerry Chizek (Appointed, Elected)	November 6, 1984
32	Don Eret	November 2, 1982
33	Jacklyn J. Smith	November 6, 1984
34	Rod Johnson	November 2, 1982
35	Arlene Nelson	November 6, 1984
36	Ray E. Lundy	November 2, 1982
37	*****Jerry D. Miller (Appointed, Elected)	November 6, 1984
38	Tom Vickers	November 2, 1982
39	William E. Barrett	November 6, 1984
40	John W. DeCamp	November 2, 1982
41	Carson H. Rogers	November 6, 1984
42	James E. Pappas	November 2, 1982
43	Howard A. Lamb	November 6, 1984
44	Rex Haberman	November 2, 1982
45	D. Paul Hartnett	November 6, 1984
46	David M. Landis	November 2, 1982
47	Dennis Baack	November 6, 1984
48	William E. Nichol	November 2, 1982
49	*****Sandra K. Scofield (Appt., Elected)	November 6, 1984

*Appointed August 9, 1984 to complete term of Karen Kilgarin, resigned.

**Appointed March 30, 1983 to succeed Thomas D. Doyle, resigned.

***Appointed May 27, 1983 to succeed Steve Fowler, resigned.

****Appointed December 4, 1984 to succeed Gordon McDonald, resigned.

*****Appointed November 9, 1984 to succeed Martin F. Kahle, deceased.

*****Appointed November 21, 1983 to succeed Samuel Cullan, resigned.

MOTION - Election of Officers

Speaker Nichol moved that the following officers be elected to serve for the Eighty-Ninth Legislature, First Special Session:

Clerk of the Legislature

Patrick J. O'Donnell

Assistant Clerk of the Legislature

Richard K. Brown

The motion prevailed.

MOTION - Suspend Rules

Mrs. Morehead moved to suspend the rules, Rule 7, Sections 2 and 5, and operate under the following provisions during the Eighty-Ninth Legislature, First Special Session:

1. Roll call votes shall be taken in the following situations:

a) Final passage of a legislative bill

b) To determine the presence of a quorum

c) At the request of any member

2. All other votes shall be taken by voice vote, except that the presiding officer may direct that the vote be taken by a show of hands. Any vote which requires more than a majority of the elected membership shall be taken by a show of hands unless a roll call vote is required.

3. The House may be placed under call by a majority of senators present and voting. If the Legislature is under call, members shall return to and remain in their seats until the call is raised by the presiding officer.

The motion prevailed with 43 ayes, 0 nays, and 6 excused and not voting.

ANNOUNCEMENT

Speaker Nichol announced today is Mrs. Labedz's birthday.

MOTION - Notify Governor

Mr. Hefner moved that the President appoint a committee of five to notify the Governor that the Legislature is now convened, organized, and ready for the transaction of business and to return with any message the Governor may have for this, the First Special Session of the Eighty-Ninth Legislature.

The motion prevailed.

The Chair appointed Messrs. Wesely, Chizek, Lundy, DeCamp, and Mrs. Marsh to serve on said committee.

The committee escorted Governor Robert Kerrey to the rostrum where he spoke to the members briefly.

The committee escorted the Governor from the Chamber.

BILLS ON FIRST READING

The following bills were read for the first time by title:

LEGISLATIVE BILL 1. By Speaker Nichol, 48th District, at the request of the Governor.

A BILL FOR AN ACT relating to appropriations; to acknowledge a transfer; to provide for a transfer; to appropriate funds to aid in carrying out the provisions of Legislative Bill 713, Eighty-ninth Legislature, First Session, 1985; and to declare an emergency.

LEGISLATIVE BILL 2. By DeCamp, 40th District.

A BILL FOR AN ACT relating to appropriations; to state intent; to acknowledge a transfer; to provide for a transfer; to appropriate funds; to repeal Laws 1985, LB 713, section 1; and to declare an emergency.

LEGISLATIVE BILL 3. By DeCamp, 40th District.

A BILL FOR AN ACT relating to the Cash Reserve Fund; to amend section 84-612, Revised Statutes Supplement, 1985; to authorize a transfer to pay a claim as prescribed; to repeal the original section; and to declare an emergency.

LEGISLATIVE BILL 4. By DeCamp, 40th District.

A BILL FOR AN ACT relating to a miscellaneous claim; to state intent; to appropriate funds; and to declare an emergency.

EASE

The Legislature was at ease from 9:23 p.m. until 10:25 p.m.

REFERENCE COMMITTEE REPORT

The Legislative Council Executive Board submits the attached report on the referral of Governor appointments and legislative bills 1 and 2.

Agriculture and Environment

Greg Williams - Environmental Control Council
Elsie Morris - Environmental Control Council
Dick Mercer - Environmental Control Council
Steve Edwards - Environmental Control Council
Terri Harris - Environmental Control Council
Betty J. Majors - Environmental Control Council
Dave Pueppke - Environmental Control Council
Elwin Larson - Environmental Control Council
Ralph O'Connor - Gasohol Committee
Gary Goldberg - Gasohol Committee
John B. Vlasin - Gasohol Committee
Norm Greenlee - Gasohol Committee

Government, Military and Veterans Affairs

William Giovanni - Director, Dept. of
Administrative Services
Steven Torrence - State Personnel Board

Judiciary

Robert L. Tagg - Superintendent, NE State Patrol
Jim Joneson - Executive Director, NE Commission
on Law Enforcement and Criminal Justice
Ronald L. Bartee - Parole Board

Miscellaneous Subjects

Lynn V. Ferer - Accountability & Disclosure Commission
Don Dworak - Liquor Control Commission
Lewis E. Trowbridge - Nebraska Arts Council

LEGISLATIVE JOURNAL

Public Health and Welfare

Deane Finnegan - Foster Care Review Board

LB **Committee**
 1 Business and Labor
 2 Business and Labor

(Signed) Chris Beutler, Chairperson
 Legislative Council
 Executive Board

MESSAGES FROM THE GOVERNOR

June 10, 1985

Mr. President, Mr. Speaker
 and Members of the Legislature
 State Capitol
 Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointments to the Environmental Control Council requiring legislative confirmation:

Appointees:

Greg Williams, 1110 South 112th Plaza, Omaha, NE 68144, 333-0226(h), 333-8000(o), Term: 6/22/85 to 6/22/89, Succeeds Don Crosier, term expired.

Elsie Morris, P.O. Box 519, Walthill, NE 68067, 846-54719, Term: 6/22/85 to 6/22/89, Succeeds Pat Hoffman, term expired.

Dick Mercer, Route 4, Kearney, NE 68847, (308) 234-9549, Term: 6/22/85 to 6/22/89, Succeeds Bill Krejci, term expired.

Steve Edwards, Rural Route 3, Box 85, Auburn, NE 68305, 825-3811(o), 274-5691(h), Term: 6/22/85 to 6/22/89, Succeeds Homer Loutzeheiser, term expired.

Terri Harris, Route 1, 44B, Scottsbluff, NE 69361, (308) 635-3291, Term: 6/22/85 to 6/22/87, Succeeds Bill Miller, resigned.

Betty J. Majors, Box 484, Osceola, NE 68651, 747-3181, Term: 6/22/85 to 6/22/89, Succeeds Vernon Pearson, term expired.

Dave Pueppke, 2420 Park Avenue, Lincoln, NE 68502, 476-0302, Term: 6/22/85 to 6/22/89, Succeeds Leonard Schaefer, term expired.

Elwin Larson, 1204 North 126th Street, Omaha, NE 68154,

FIRST DAY - SEPTEMBER 19, 1985

9

444-5226(o), 493-7828(h), Succeeds Sylvia Wagner, term expired.

These appointments are respectfully submitted for your consideration.

Sincerely,
(Signed) ROBERT KERREY
Governor

cc: Staff Assistant to the Governor
Accountability and Disclosure Commission
Department of Administrative Services
Department of Environmental Control

July 1, 1985

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the position of Superintendent, Nebraska State Patrol, requiring legislative confirmation:

Appointee:
Robert L. Tagg, Lincoln, Nebraska.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) ROBERT KERREY
Governor

cc: Staff Assistant to the Governor
Accountability and Disclosure Commission
Department of Administrative Services

July 1, 1985

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol

Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the position of Director, Department of Administrative Services, requiring legislative confirmation:

Appointee:

William Giovanni, Lincoln, Nebraska.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) ROBERT KERREY
Governor

cc: Staff Assistant to the Governor
Accountability and Disclosure Commission
Department of Administrative Services

July 15, 1985

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointments to the Gasohol Committee requiring legislative confirmation:

Appointees:

Ralph O'Connor, Box 114, Grafton, NE 68365, 282-7259. Term: July 15, 1985 to July 1, 1989. Succeeds: is reappointed.

Gary Goldberg, Route 1, Box 229, Kearney, NE 68847, (308) 234-6381. Term: July 15, 1985 to July 1, 1989. Succeeds: is reappointed.

John B. Vlasin, HCR Box 82, Elsie, NE 69134, (308) 228-2271. Term: July 15, 1985 to July 1, 1987. Succeeds: Don Hutchins, resigned.

Norm Greenlee, Plant Manager, ADC I, East Highway 6, Hastings, NE 68901, 463-6885. Term: July 15, 1985 to July 1,

FIRST DAY - SEPTEMBER 19, 1985

11

1989, succeeds Don Larson, term expired.

These appointments are respectfully submitted for your consideration.

Sincerely,
(Signed) ROBERT KERREY
Governor

cc: Staff Assistant to the Governor
Accountability and Disclosure Commission
Department of Administrative Services
Gasohol Committee

July 18, 1985

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the position of Executive Director of the Nebraska Commission on Law Enforcement and Criminal Justice, effective August 1, 1985, requiring legislative confirmation:

Appointee:
Jim Joneson, Lexington, Nebraska.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) ROBERT KERREY
Governor

August 19, 1985

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Accountability and Disclosure Commission requiring legislative confirmation:

Appointee:

Lynn V. Ferer, Suite 1175 Commercial Federal Tower, 2120 South 72nd Street, Omaha, NE 68124, 391-4043(o), 334-2288(h),
Term: 8/16/85 to 6/30/91, Succeeds: Mimi Waldbaum, term expired.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) ROBERT KERREY
Governor

cc: Staff Assistant to the Governor
Accountability and Disclosure Commission
Department of Administrative Services

August 19, 1985

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the State Personnel Board requiring legislative confirmation:

Appointee:

Steven Torrence, 2526 Worthington Avenue, Lincoln, NE 68502,
476-0846, Term: 9/20/85 to 8/4/90, Succeeds: Betty Majors,
term expired.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) ROBERT KERREY
Governor

cc: Staff Assistant to the Governor
Accountability and Disclosure Commission

FIRST DAY - SEPTEMBER 19, 1985

13

Department of Administrative Services
Department of Personnel

August 28, 1985

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Liquor Control Commission requiring legislative confirmation:

Appointee:

Don Dworak, 2973 North Park Lane, Columbus, NE 68601,
564-0494, Term: 8/28/85 to 5/24/91, Succeeds: Herb Duis, term
expired.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) ROBERT KERREY
Governor

cc: Staff Assistant to the Governor
Accountability and Disclosure Commission
Department of Administrative Services
Liquor Control Commission

September 6, 1985

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Parole Board requiring legislative confirmation:

Appointee:

LEGISLATIVE JOURNAL

Ronald L. Barte, Chairman, P.O. Box 94754, Lincoln, NE 68509-4754, 471-2156, Term: 9/9/85 to 9/9/91, Succeeds: is reappointed.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) ROBERT KERREY
Governor

cc: Staff Assistant to the Governor
Accountability and Disclosure Commission
Department of Administrative Services
Parole Board

September 9, 1985

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Nebraska Arts Council requiring legislative confirmation:

Appointee:

Lewis E. Trowbridge, Chair, 600 Kiewit Plaza, Omaha, NE 68131, 348-1450, Term: 9/6/85 to 9/2/88, Succeeds: LaVon Crosby, term expired.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) ROBERT KERREY
Governor

cc: Staff Assistant to the Governor
Accountability and Disclosure Commission
Department of Administrative Services
Arts Council

September 9, 1985

Mr. President, Mr. Speaker

and Members of the Legislature
State Capitol
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Foster Care Review Board requiring legislative confirmation:

Appointee:

Deane Finnegan, 1936 Ryons, Lincoln, NE 68502, 475-2146,
Term: 9/9/85 to 7/15/88, Succeeds: JoAnn LeBaron, term
expired.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) ROBERT KERREY
Governor

cc: Staff Assistant to the Governor
Accountability and Disclosure Commission
Department of Administrative Services
Foster Care Review Board

ATTORNEY GENERAL'S OPINIONS

Opinion No. 101
June 6, 1985

Re: LB 324, Unlawful Employment Practices Outside Nebraska

Dear Senator Wesely:

We are responding to your request concerning the application of the amendments to Neb.Rev.Stat. §§48-1102 and 48-1114, as a result of the passage of LB 324. In particular, the bill provides that it is an unlawful employment practice for an employer, employment agency, or labor organization to discriminate against an individual because that individual has "opposed any practice or refused to carry out any action unlawful under the laws of the United States or this State."

The amendments to the above referenced statutes codify an exception to the "employment at will" rule. "The general rule is that when the employment is not for a definite term, and there are no contractual or statutory restrictions upon the right of discharge, an

employer may lawfully discharge an employee whenever and for whatever cause he chooses, without incurring liability. Mau v. Omaha National Bank, 207 Neb. 308, 299 N.W.2d 147 (1980). However, in that same case, the Nebraska Supreme Court recognized that this rule is not an absolute bar to a claim of wrongful discharge. "In a number of jurisdictions, an exception to the internal 'terminable at will' rule has been articulated in recent years. Under this exception, an employee may claim damages for wrongful discharge when the motivation for the firing contravenes public policy." Id. at 316.

Under traditional common law rules, an employment contract of an indefinite duration is generally terminable at "the will" of either party. However, various jurisdictions throughout the country have established the rule that employers do not enjoy an absolute or totally unfettered right to discharge even an at will employee. Tameny v. Atlantic Richfield Company, 164 Cal.Rptr. 839, 610 P.2d 1330 (1980). Relying on Petermann v. International Brotherhood of Teamsters, 174 Cal.App.2d 184, 344 P.2d 25 (1959), the court in Tameny stated that:

Thus, Petermann held that even in the absence of an explicit statutory provision prohibiting the discharge of a worker on such grounds, fundamental principles of public policy and adherence to the objectives underlying the state's penal statutes require the recognition of a rule barring an employer from discharging an employee who has simply complied with his legal duty and has refused to commit an illegal act.

Id. at 1333-1334.

The Court went on to specifically hold that "an employer's authority over its employee does not include the right to demand that the employee commit a criminal act to further its interests, and an employer may not coerce compliance with such unlawful directions by discharging an employee who refuses to follow such an order." Id. 1336-1337.

You have posed several questions concerning the applicability of these amendments to specific situations. In particular, you have asked if an individual, while in another state, opposed a practice or refused to carry out an action which was illegal under the laws of that state but not illegal under the laws of the United States, would that individual upon coming to Nebraska be protected from discrimination under this bill? In order to answer your question, it is necessary to examine the language in subsection 11 of Section 48-1102. That subsection provides that "Unlawful under the laws of the United States or this State shall mean acting contrary to or in defiance of the law or disobeying or disregarding the law." You apparently foresee an ambiguity as to the exact definition of "laws of the United States or this State." The term "United States" has

several meanings. The United States Supreme Court has indicated that:

The term "United States" may be used in any one of several senses. It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in the family of nations. It may designate the territory over which the sovereignty of the United States extends, or it may be the collective name of the states which are united by and under the Constitution.

Hooven & Allison Company v. Evatt, 324 U.S. 652 at 671-72 (1944). Therefore, it would appear that the term "United States" encompasses all of the various states of the Union. In response to your question, an individual may not be terminated or discriminated against for refusing to carry out an action illegal under the laws of this or any other state, or of the United States. We would concede that an argument might be made to the contrary. To that extent, we would suggest that an amendment clarifying the language "laws of the United States or this State" may be appropriate.

You have also asked whether or not our State's jurisdiction extends to actions taken in Nebraska by an employer, employment agency, or labor union as reprisal for refusing to violate a law or opposing an unlawful practice while in another state. We would point out that the action in question is that taken by an employer, employment agency, or labor union in Nebraska. The location of the employee's activities is not relevant to the inquiry. Rather, it is the action taken by the employer, employment agency, or labor union in the State of Nebraska.

We hope that we have answered your questions concerning the amendments to LB 324. If we can be of further assistance to you in this regard, please contact the undersigned.

Very truly yours,
ROBERT M. SPIRE
Attorney General

(Signed) Ruth Anne E. Galter
Assistant Attorney General

REG:bmh

cc: Patrick J. O'Donnell
Clerk of the Legislature

Opinion No. 108
July 2, 1985

Dear Senator DeCamp:

In your letter of June 11, 1985, you call our attention to the fact

that LB 662 was passed by the 1985 Legislature, that the Governor has expressed an intent to call a special session of the Legislature to again consider the substance of LB 662 and that a petition has been filed with the Secretary of State, the object of which is to place LB 662 before the voters at the general election by the constitutional process of referendum.

In light of these facts, you inquire as to our opinion as to the power of the Legislature to enact legislation at any such special session affecting the subject matter of LB 662. For the reasons set out below, we believe the Legislature could, at a special session, enact legislation affecting the subject matter of LB 662 at any time before petitions containing signatures of 5% of the electorate are filed with and verified by the Nebraska Secretary of State.

The possibilities presented by the facts you raise appear to present a case of first impression in Nebraska. In 1966, the Nebraska Supreme Court decided the case of Klosterman v. Marsh, 180 Neb. 506, 143 N.W.2d 744. In Klosterman, supra, the Legislature passed an act, it became effective, referendum petitions were approved and circulated, and while the Legislature was still in session, the Legislature amended the act which was the subject of the referendum. The direct question presented was whether the signatures obtained while the Legislature was still in session and before the subsequent amendment were valid.

Klosterman, supra, therefore differs in several respects. First, the subsequent legislative act there was an amendment to a small part of the whole act, whereas here, any subsequent legislative act would not be an amendment, but rather, a new legislative act, albeit on the same subject matter, amending the same statute LB 662 amended. Secondly, the case did not involve the power of the Legislature to act, but rather, the validity of signatures obtained.

We believe, however, that some of the language found in Klosterman, supra, is instructive to the question you raise. Citing with approval from its previous decision in Ayres v. Amsberry, 104 Neb. 273, 177 N.W. 179, the court stated; "The amendment under consideration reserves to the people the right to act in the capacity of legislators. The presumption should be in favor of the validity and legality of their act. The law should be construed, if possible, so as to prevent absurdity and hardship and so as to favor public convenience." The court later said: "Any legislation which would hamper or render ineffective the power reserved to the people would be unconstitutional." "

After reaching the conclusion that the signatures obtained while the Legislature was still in session were valid, the court was careful to point out the kinds of situations that were not addressed by their decision. Specifically, they held:

In this case, we are not faced with the problem of a referendum petition against a specific legislative act in which changes or amendments made by the Legislature in a subsequent amending act might be such as to make them inseverable. Nor is this a case where the latter amendment was so major and extensive as to make the issue to be presented to the voters unintelligible or so misleading as to be unfair or constitute fraud. Neither is this a case in which rejection of the act under referral by the voters would create confusion or upset the orderly process of legislation.

While we are unable to find a decision of the Nebraska Supreme Court directly on point, the Supreme Court of the State of Missouri appears to have addressed a similar issue in 1922. In State v. Becker, 240 S.W. 229, the Missouri Supreme Court considered a situation where an act was suspended because of a referendum then subsequently amended by the general assembly in an extra session. The court stated that the power of the Legislature was suspended until after the act had been voted upon. To not do so, the court reasoned, would make the referendum power meaningless and futile. It is important to note, however, that the court there limited its holding to situations where the legislative act had actually been referred and not to a situation where the process of referendum had been begun but not completed.

We believe the Nebraska Supreme Court would find the holding of the Missouri Supreme Court cited above generally persuasive, and thus, we reach the conclusion that the Legislature may reconsider the action taken by the passage of LB 662 up until the time when the referendum process has been completed by the filing with and the verification by the Secretary of State of the requisite number of signatures to cause the matter to be placed before the voters at the next general election. After that time, it would appear that a major substantive change to the provisions of LB 662 would have the effect of hampering or rendering ineffective the constitutionally reserved power of referendum.

Sincerely,
ROBERT M. SPIRE
Attorney General
(Signed) Terry R. Schaaf
Assistant Attorney General

TRS:dr

cc: Patrick J. O'Donnell
Clerk of the Legislature

Dear Senator DeCamp:

This is in response to your letter of June 28, 1985, concerning property taxes and sales taxes as they pertain to rental equipment. You note that you are considering legislation on this subject and ask specifically whether it is improper for property taxes to be levied and collected on property which is owned and rented by companies in the rental business, when these companies are also required to collect and remit sales tax on each rental transaction involving such equipment.

First, it should be noted that we are dealing with two completely separate and unrelated taxes, the property tax which is a tax levied on the value of the property itself, and the sales tax which is a tax on a transaction, in this case the rental of the property. The sales tax is levied by the state, whereas the property tax is levied by the county. In addition, the property tax is paid by the owner of the property, in this case the rental company, whereas the sales tax is paid by the person renting the property, and not the owner of the property in the rental business who merely collects the sales tax.

In the case of the sales tax, Neb.Rev.Stat. §77-2702 (Reissue 1981), provides specifically that a sale for purposes of this tax shall include leases and rentals. There is thus no real question that the sales tax is required to be levied and collected on the rental of personal property.

When we examine the property tax on personal property, we find that most types of personal property have been exempted from taxation by Neb.Rev.Stat. §77-202 (Reissue 1981). This section provides specifically that "business inventory" is exempt from the personal property tax. This in turn leaves the category of what is generally referred to as "business equipment" as taxable personal property. The statutes do not define either of these categories of personal property, but the Nebraska Department of Revenue, pursuant to its general authority to enact regulations to enforce the tax laws, has adopted regulations for this purpose. The original regulation was Reg-41-2(2) adopted on September 15, 1975, which defined business inventory "as goods held for sale in the manufacturing or merchandising business where the production, sale or purchase of merchandise is an income producing factor." It went on to say that "As a lease or rental is not a sale, goods held for lease or rental by a taxpayer cannot be included in business inventory." This regulation was recodified as Reg-42-003.02 in 1984. This regulation clearly places property which is owned and used by businesses engaged in the rental of such property in the category of "business equipment."

The rationale for such a classification appears to have been the fact that such property continues to be owned and "used" by the

person engaged in that business, just as any other business would own and use other types of "business equipment" for the purpose of generating income in the operation of that business. This appears, on its face, to be a reasonable classification. "Classification for tax purposes may be based on the manner of conducting business, and business conducted in one manner may be tax differently from business conducted in another manner. The purpose for which property is kept or used has long been a recognized, if not a favorite, basis for distinction in taxation." Stahmer v. State, 192 Neb. 63 at 68, 218 N.W.2d 893 (1974).

Of course, a duly enacted regulation has the force and effect of law, and is as binding as if it were a statute enacted by the Legislature. Douglas County Welfare Administration v. Parks, 204 Neb. 570, 284 N.W.2d 10(1979). Likewise, the courts have said that they will give considerable weight to the construction of a statute by the agency charged with enforcement of that law, particularly when the Legislature has failed to take any action over a long period of time to change such an interpretation. ATS Mobile Telephone, Inc., Omaha v. Curtin Call Communications, Inc., 194 Neb. 404, 232 N.W.2d 248 (1975), McCaul v. American Savings Co., 213 Neb. 841, 331 N.W.2d 795 (1983).

Thus, even though the Department of Revenue, has in effect, adopted a different definition of a sale for the purposes of the personal property tax than that used for the sales tax, there appears to be no impropriety in such treatment. As we have indicated, the two taxes are completely separate and unrelated, and the definitions applied to one tax need not necessarily be the same as the definitions applied in the case of another. Thus, the present system of taxing rental property and rental transactions is appropriate and enforceable, unless or until such time as the Legislature may wish to change the method of taxing such personal property.

Sincerely,
ROBERT M. SPIRE
Attorney General

(Signed) John Boehm
Assistant Attorney General

JB:ejg

cc: Patrick J. O'Donnell
Clerk of the Legislature

July 22, 1985

Mr. John Payne, Chairman
Board of Regents

Regents Hall
University of Nebraska
3835 Holdrege
Lincoln, Nebraska 68583

Dear Mr. Payne:

We were advised by Senator DeCamp that members of the Board of Regents may be considering the transfer of funds specifically appropriated to one campus to be used at another campus. A copy of that letter is enclosed.

Neb.Rev.Stat. §84-205(5) (Reissue 1981) provides that one of the duties of the Attorney General shall be “{t}o enforce the proper application of money appropriated by the Legislature to the various funds of the state, and prosecute breaches of trust in the administration of such funds; . . .” In accordance with that duty, we are sending this letter advising you of our position on such a proposed transfer of funds.

LB 722, sec. 48, 1985 Legislative Session, provides the appropriations for the University of Nebraska. Subparagraphs (2), (3) and (4) in turn provide specific General Fund appropriations to each of three campuses, the University of Nebraska-Lincoln, the University of Nebraska-Omaha, and the University of Nebraska-Medical Center.

Article III, Section 22, of the Nebraska Constitution provides that “{e}ach Legislature shall make appropriations for the expenses of the Government.” Article III, Section 25, of the Constitution provides that “{n}o money shall be drawn from the treasury except in pursuance of a specific appropriation made by law, . . .” Article VII, Section 10, of the Constitution further provides that the general government of the University shall be vested in the Board of Regents, “under the direction of the Legislature.”

In the case of Board of Regents v. Exon, 199 Neb. 146, 256 N.W.2d 330 (1977), the board conceded that “the Legislature has complete control of the money which is to be appropriated to the University from the general revenue of the state.” Id. at 150. The controversy in that case involved only the funds which were derived from the operation of the University or received from federal government or private donors, as opposed to the General Fund appropriations. Nevertheless, it appears that the court gave general approval to the proposition that the Legislature has complete control over the General Fund appropriations to the University.

The expenditure of the General Funds of the state is under the control of the Legislature and it is the duty and responsibility of the Legislature to make the appropriations necessary for the

operation of state government. The restriction upon money to be drawn from the treasury has reference generally to funds of the state that may be used to defray the general expenses of government.

The funds of the University, which are not derived from taxation, have a different status.

Id. at 150-151.

In view of the above cited constitutional provisions and caselaw, we are of the opinion that any attempt to transfer General Fund monies appropriated specifically to one campus for use at another campus would be in violation of the appropriations bill and the above cited constitutional provisions.

Sincerely,
ROBERT M. SPIRE
Attorney General
(Signed) John Boehm
Assistant Attorney General

JB:ejg
enc.

cc: Senator John DeCamp
Clerk of the Legislature
Governor Robert Kerrey
Ronald Roskens, President
University of Nebraska
Richard Wood, General Counsel
University of Nebraska
Legislative Fiscal Office
Budget Division, DAS

Opinion No. 120

July 25, 1985

Dear Senator DeCamp:

You have requested our opinion concerning whether the provisions of the Public Meetings Law, Neb.Rev.Stat. §§84-1408 to 84-1414 (Reissue 1981 and Supp. 1984), are applicable to the Legislature.

As you state in your letter, the original version of the Public Meetings Law provided an express exclusion from its application to both the Legislature and its committees. Neb.Rev.Stat. §84-1401 (Reissue 1971) (Repealed 1975). The original public meetings statutes were repealed in 1975, with the passage of LB 325. The definition of "public body" in the current version of §84-1409(1) does not contain any express exclusion for the Legislature.

In an opinion issued by our office following the passage of LB 325 in 1975, we concluded the provisions of the Public Meetings Law were applicable to the Legislature and its committees. Report of Attorney General 1975-76, Opinion No. 118, August 29, 1975, p. 157. Upon reconsideration, we believe the conclusion reached in our earlier opinion was incorrect.

Neb.Rev.Stat. §84-1408 (Reissue 1981) provides, in part:

Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of the State of Nebraska, federal statutes, and sections 79-327, 84-1408 to 84-1414, and 85-104. (Emphasis added).

Article III, Section 11 of the Nebraska Constitution provides, in pertinent part, that:

. . . The doors of the Legislature and of the Committees of the Whole, shall be open, unless when the business shall be such as ought to be kept secret.

Our earlier opinion concluded the Nebraska Constitution did not contain any provisions contrary to or in conflict with the Public Meetings Law, and, therefore, the Constitution did not provide "otherwise" to except the Legislature from the application of the statutory public meetings requirements. Upon reflection, however, we believe the phrase "except as otherwise provided by the Constitution of the State of Nebraska" in §84-1408 is ambiguous, and susceptible to a different interpretation. In particular, it is possible the Legislature intended this phrase to mean that, as the Nebraska Constitution did provide a requirement of open access to meetings of the Legislature, the provisions of the Public Meetings Law were therefore not intended to apply to the Legislature.

"When the language used in a statute is ambiguous and must be construed, recourse should be had to the legislative history for the purpose of discovering the intent of the lawmakers." North Star Lodge #227 v. City of Lincoln, 212 Neb. 236, 240, 322 N.W.2d 419, 422 (1982). In Norden Laboratories, Inc. v. County Board of Equalization, 189 Neb. 437, 439, 203 N.W.2d 152, 154 (1973), the Nebraska Supreme Court stated: "In the Legislature the record of a floor explanation or debate is legislative history, and it may be an extrinsic, secondary source in statutory interpretation."

A review of the legislative history surrounding the passage of LB 325 in 1975 discloses a legislative intent to exclude the Legislature from the application of the Public Meetings Law. During the floor debate on LB 325, the specific question of the applicability of the bill to the Legislature was addressed by the bill's introducer, Senator Gary Anderson, who stated:

. . . {t}here is a specific recognition of the Legislature's right to open or close its meetings in the Constitution. . . . {I}n the opening section 1 of the act, it recognizes the Constitution and the Constitution prevails in this case. This particular act does not apply to the Legislature because the Constitution overrides. . . . LB 325 (1975), Transcript of Floor Debate, May 14, 1975, p. 4611.

This statement by the introducer of LB 325 clearly indicates that, based on the constitutional provision for public access to meetings of the Legislature, the Legislature intended to phrase "except as otherwise provided by the Constitution" to render the provisions of the Public Meetings Law inapplicable to the Legislature.

Based on the foregoing, it is our opinion that the Legislature is not subject to the requirements of the Public Meetings Law.

Very truly yours,
ROBERT M. SPIRE
Attorney General
(Signed) L. Jay Bartel
Assistant Attorney General

LJB/bae
cc: Patrick J. O'Donnell
Clerk of the Legislature

Opinion No. 121
July 25, 1985

Dear Senator Nichol:

This is in response to your letter of July 11, 1985. In that letter you note our previous opinion, No. 108 issued July 5, 1985, concerning the subject of LB 662 and the current referendum campaign. In that regard you ask the following questions.

- (1) Could legislation be constitutionally enacted drafted in the form of amendments to LB 662, such amendments operative effect being made contingent upon the outcome of the referendum election?
- (2) Could legislation be constitutionally enacted drafted in the form of amendments to LB 662 the operative date of such amendments being delayed to December 31, 1986?

In our previous opinion we concluded that after the referendum process had been completed to the extent of the filing and verification of the requisite number of signatures with the Secretary of State, thereby causing the matter to be placed on the ballot for the next general election, "it would appear that a major substantive change to

the provisions of LB 662 would have the effect of hampering or rendering ineffective the constitutionally reserved power of referendum." That conclusion was based in a large part upon the rationale of the Missouri Supreme Court in the case of State v. Becker, 240 S.W. 229 (1922). In that case the court stated that once the right of referendum had been invoked, the Legislature "is divested of all power in regard to the matter referred until the action of the people has been exercised by a vote upon same." The court went on to hold that "after the right of reference has been invoked," the Legislature "cannot interfere with a referred measure by the passage of another on the same subject until after the one referred has been voted upon by the people and their power in that respect exhausted." Id. at 232. In other words the Legislature's power to deal with the subject matter of a referred statute is suspended by the referendum petition until after the election on the referred matter. In fact this was the precise ruling of the Maine Supreme Court in an opinion to that state's Legislature on the same issue, In Re Opinion of the Justices, 174 A. 853 (1933). Specifically the court stated that "After the referendum has been invoked and until the voters have acted thereunder, the subject-matter of the referred bill is withdrawn from further consideration of the Legislature. It can neither amend nor repeal the act during that period." Id. at 855.

Having adopted this rationale in our previous opinion, we thus believe that the answer to both of your questions is that the Legislature may not make any such amendments to LB 662 pending the outcome of the election, once the referendum petitions have been filed and verified by the Secretary of State. This is true regardless of the effective date of the amendments or the fact that they may be contingent upon the outcome of the referendum action. Any such attempted amendments could be construed as an interference with the people's constitutional right of referendum, and would therefore likely be held unconstitutional if challenged before the courts.

Sincerely,
ROBERT M. SPIRE
Attorney General

(Signed) John Boehm
Assistant Attorney General

JB:bae

cc: Patrick J. O'Donnell
Clerk of the Legislature

Opinion No. 122
July 30, 1985

Re: Omaha Tribe of Native Americans and State Gambling and Bingo Laws

Dear Senator Conway:

You have asked for this office's opinion on several issues in connection with a proposed purchase of commercial lots in South Sioux City by the Omaha Tribe of Native Americans. Apparently the Tribe proposes to acquire this property and then possibly use part of it for operation of a tribe-owned bingo facility.

It is important to note at the outset that federal Indian law is extremely complex and, in many respects, rather unclear. While your letter seeks clear, simple answers, such cannot be given in this area of the law. The results in any given situation will depend on numerous factors, many of which simply cannot be foreseen in a hypothetical setting. Nonetheless, we will present some general guidelines which we hope will provide insight as to what is likely to occur should the Omaha Tribe's plan, as you describe it, become reality.

I. Law Enforcement

You ask for a description of the law enforcement responsibilities of federal, state and tribal authorities in connection with the tribe-owned land in South Sioux City in view of Public Law 280 and Nebraska's retrocession of criminal jurisdiction over the Omaha Reservation to the federal government in 1969.

In our letter of March 28, 1985, to Senator Goll regarding the proposed retrocession of the Winnebago Reservation in Thurston County we gave the following general background which is also useful in analyzing your inquiry.

Generally speaking, federal Indian laws and treaties pre-empt state laws in Indian country so that without a specific federal statute delegating jurisdiction over areas of Indian country to a state, jurisdiction within Indian country remains exclusively in federal and tribal hands.

Public Law 280, enacted by Congress in 1953, did make a specific delegation of jurisdiction to Nebraska and four other states granting those states authority over criminal and civil matters arising within Indian country located within their borders.

It has generally been held, however, that this Public Law 280 grant of jurisdiction extended only to matters over which the federal government had earlier had authority and that it was not meant to detract from tribal jurisdiction as it existed. Therefore, it is "probable that this jurisdiction of the tribes remains concurrent with the states in Indian country subject to Public Law 280 to the same extent it was concurrent with the federal

government prior to the Act." F. Cohen, Handbook of Federal Indian Law, 367 (1982 ed.).

In 1968 Congress amended Public Law 280 to provide the states a means to give back to the federal government "all or any part of the criminal or civil jurisdiction, or both" which the states had acquired under the original Public Law 280. 25 U.S.C. §1323. This act of giving back jurisdiction to the federal government is called "retrocession."

In 1969 the Nebraska Legislature passed Legislative Resolution 37 which provided in pertinent part:

{T}he State of Nebraska hereby retrocedes to the United States all jurisdiction over offenses committed by or against Indians in the areas of Indian country located in Thurston County, Nebraska, acquired by the State of Nebraska pursuant to Public Law 280 of 1953. (Emphasis supplied.)

It is obvious from this that the Nebraska Legislature intended to retrocede criminal jurisdiction over Indian country in Thurston County only.

South Sioux City, of course, is not within Thurston County. Therefore, the issue is whether or not the retrocession of 1969 is also applicable to Omaha tribe-owned land outside of Thurston County. We do not believe that Legislative Resolution 37 went that far and that state jurisdiction under Public Law 280 would apply to Omaha tribal property in South Sioux City.

Public Law 280, as codified at 18 U.S.C. §1162, gave Nebraska jurisdiction over offenses committed by or against Native Americans in all Indian country within the state. The subsequent federal retrocession statute, codified at 25 U.S.C. §1323, provides that a Public Law 280 state such as Nebraska can offer to retrocede "all or any measure of the criminal or civil jurisdiction, or both, acquired by such state pursuant to" Public Law 280. (Emphasis supplied.) This means that Nebraska can limit the amount of Public Law 280 jurisdiction it retrocedes to the federal government. In Legislative Resolution 37 the Legislature did just that, limiting the retrocession to criminal jurisdiction only and to Indian country in Thurston County only.

In fact, the United States did not accept all of the jurisdiction offered to be retroceded by Nebraska in 1969 and further limited the retrocession to Omaha Indian country in Thurston County. See, Omaha Tribe of Nebraska v. Village of Walthill, 334 F.Supp. 823, 828 (D. Nebraska 1971), affirmed, 460 F.2d 1327 (8th Circ. 1972), cert. denied, 409 U.S. 1107. There has been no retrocession of civil or criminal jurisdiction over the Winnebago Reservation in that county.

Because of this 1969 retrocession it is clear that state and local

authorities do not have jurisdiction over offenses by or against Native Americans committed within the boundaries of the Omaha Reservation in Thurston County. Federal and tribal authorities have that jurisdiction and responsibility. Outside of Thurston County, however, the state and local authorities would continue to have law enforcement responsibility over tribe-owned land, and state courts would have jurisdiction over crimes committed there.

There is one possible complicating factor. We understand that the Tribe may seek to have the land in South Sioux City held in trust by the United States for the benefit of the Tribe under the terms of a federal statute (25 U.S.C. §465) or to have it declared to be a reservation under the terms of another federal statute (25 U.S.C. §467). If the Secretary of the Interior grants either or both of these requests such that the South Sioux City land becomes "Indian country," then it is possible that tribal authorities would have concurrent (*i.e.*, simultaneous) jurisdiction with state and local authorities for criminal law enforcement purposes. The Tribe would be able to enforce its own criminal laws within the boundaries of that land to the same extent that it can do so on the reservation in Thurston County.

With the proper agreements and understandings such concurrent jurisdiction need not be a problem. However, conflicts and confusion can result if all parties do not proceed in good faith.

While state and local authorities and, possibly, tribal authorities would have law enforcement responsibilities on any land owned by or on behalf of the Tribe in South Sioux City, federal authorities would not have that responsibility in light of Public Law 280 which gave whatever criminal jurisdiction the federal government had to the states. Of course, federal authorities would continue to have jurisdiction over federal crimes committed on the tribally-owned land in South Sioux City, just as they have such authority everywhere else.

II. Application of State Gambling Laws

You ask whether Native American tribes in Nebraska are exempt from state gambling laws. We are interpreting your inquiry to refer to those constitutional and statutory provisions which prohibit certain forms of gambling as against public policy and subject those who engage in those forms of gambling to criminal penalties.

Public Law 280 states quite simply that "The criminal laws of {the} State . . . shall have the same force and effect within such Indian country as they have elsewhere within the State." 18 U.S.C. §1162(a). Thus, it seems clear that, where there has been no retrocession of criminal jurisdiction, the prohibitory criminal gambling laws of Nebraska would be enforceable against Native Americans in Indian country. And, of course, outside of Indian country Native Americans are subject to the same criminal laws as

the rest of the citizens of the state. See, F. Cohen, Handbook of Federal Indian Law, 348-49 (1982 ed.); Mescalero Apache Tribe v. Jones, 411 U.S. 145, 148-49 (1973).

Therefore, the only remaining question is whether the state's prohibitory criminal gambling laws apply to the Omaha Reservation in Thurston County where criminal jurisdiction has been retroceded. We believe that such criminal laws do apply in retroceded Indian country but that they cannot be enforced by state authorities and that they apply only indirectly by means of federal law enforceable by federal authorities.

A section of the Organized Crime Control Act of 1970, 18 U.S.C. §1955, makes it a federal crime to operate a gambling business that "is a violation of the law of a State . . . in which it is conducted." At least one federal appeals court has said that section 1955 is applicable to Native Americans on reservations even where the state has no Public Law 280 criminal jurisdiction and that such Native Americans can be prosecuted under that federal statutory provision (§1955) if their on-reservation gambling business would be in violation of a state criminal law prohibiting such type of gambling. United States v. Farris, 624 F.2d 890 (9th Cir. 1980), cert. denied, 449 U.S. 1111 (1981). Accordingly, under section 1955 it appears that Native Americans on the Omaha Reservation in Thurston County could be prosecuted by federal authorities in federal court if they engaged in gambling activities which are prohibited and made criminal by Nebraska state law.

This interpretation is reinforced by the decision in United States v. Marcyes, 557 F.2d 1361 (9th Cir. 1977), in which the court held that Native Americans could be prosecuted under the federal Assimilative Crimes Act, 18 U.S.C. §13, for on-reservation sale of fireworks prohibited by Washington State law. While Marcyes involved a different federal statute and fireworks instead of gambling, it does provide support for the proposition that Native Americans on reservations may be prosecuted under federal law for violations of state criminal gambling laws.

Our conclusion, then, is that Native Americans in Nebraska, whether residing within or outside of Indian country and whether residing within or outside an area retroceded to federal jurisdiction, are not exempt from those criminal laws of Nebraska prohibiting certain types of gambling.

As explained at the outset of this letter, however, Indian law is a very complex subject; and even this relatively straight-forward conclusion about the applicability of state prohibitory gambling laws must be qualified in at least two ways.

First, there is some question that the state's criminal gambling laws could be applied to gambling activities among Native Americans only

on the Omaha Reservation in Thurston County. The Farris case involved casino-type gambling on an Indian Reservation with both Native Americans and non-Indian operators and clientele. And the Marcy case involved sale of illegal fireworks to non-Indians on a reservation. In Farris the court noted the non-Indian participation as an important ingredient in its decision allowing prosecution of the Native American participants. If only Native Americans are involved, it is less likely that a court would allow state gambling laws to be enforced on a reservation where there has been retrocession of criminal jurisdiction since this would impinge on the tribe's self-determination and its sovereignty over that territory, both of which are strongly protected by federal law and policy.

Second, and most importantly, to the extent that state law may allow certain forms of gambling but merely impose regulations on it (with incidental criminal penalties for violation of the regulatory aspects of the law), such regulatory-type gambling laws are not enforceable in Indian country, whether or not there has been retrocession. It has been made clear by the United States Supreme Court in Bryan v. Itasca County, 426 U.S. 373 (1976), that Public Law 280 does not grant the states any regulatory jurisdiction over Indian country generally other than what they might have under other federal laws. Id. at 388-90. And the federal appellate courts have said that this means state regulatory gambling laws cannot be applied against Native Americans in Indian country even in Public Law 280 states. See, Barona Group of Captain Grande Band, etc. v. Duffy, 694 F.2d 1185 (9th Cir. 1982), cert. denied, 461 U.S. 929 (1983); Seminole Tribe of Florida v. Butterworth, 658 F.2d 310 (5th Cir. 1981), cert. denied, 455 U.S. 1020 (1982). Obviously, if the state does not have regulatory jurisdiction over legal forms of gambling within Indian country where Public Law 280 applies, it certainly does not have such jurisdiction where Public Law 280 does not apply.

It is for this reason that we stated initially that our response to your second question is premised on the assumption that you are referring to Nebraska law prohibiting certain types of gambling as a matter of public policy and making it a criminal violation to engage in such gambling. If state law allows certain types of gambling and merely regulates it (with incidental criminal penalties to enforce the regulatory aspects), then it is likely that this would be deemed a state civil regulatory scheme which may not be enforced in Indian country irrespective of Public Law 280. See, Barona Group, supra; Seminole Tribe, supra.

III. Regulation of Native American-Sponsored Bingo

Your third question is whether or not a Native American Tribe operating bingo games outside of Indian country would be subject to the regulations found in the Nebraska Bingo and Pickle Card

Regulatory Act, Neb.Rev.Stat. §§9-124 et seq. (Reissue 1983) and specifically §9-148 of the Act.

Assuming that the location of the Tribe's bingo operations is outside of a reservation and not on Indian trust land held by the United States, the answer is that these state laws would apply and be enforceable. As pointed out above, outside Indian country Native Americans are generally subject to the same criminal and civil laws as other citizens of the state. See, Mescalero Apache Tribe v. Jones, supra; Puyallup Tribe v. Department of Game, 391 U.S. 392, 398 (1968).

There are, however, two permutations which might occur and which would likely change the above conclusion. First, if the South Sioux City property of the Tribe is declared to be a reservation by the Secretary of the Interior pursuant to his authority under 25 U.S.C. §467, then that land would be "Indian country" and Nebraska's regulatory act concerning bingo would not be enforceable therein. At least two federal courts of appeal and one federal district court have held that state and local laws similar to Nebraska's regulating the conduct of bingo games but not prohibiting the playing of bingo by the general public are not enforceable against Native Americans in Indian country even in Public Law 280 states. Barona Group of Captain Grande Band, etc. v. Duffy, supra; Seminole Tribe of Florida v. Butterworth, supra; Oneida Tribe of Indians v. Wisconsin, 518 F.Supp. 712 (W.D. Wisconsin 1981). Thus, it is our opinion that the Nebraska Bingo and Pickle Card Regulatory Act is not enforceable against Native Americans or Native American Tribes conducting bingo operations within Indian country in the state. And, if the Omaha Tribe's land in South Sioux City is declared to be a reservation, then it, too, would be Indian country so that the Act would not be enforceable against the Tribe there either.

We recognize that the Oklahoma Supreme Court has recently held that the state may have jurisdiction to regulate bingo operations within Indian country. Oklahoma v. Seneca-Cayuga Tribe, Supreme Court of Oklahoma, No. 60-074, July 2, 1985. We have reviewed the majority opinion in that case and believe that it is contrary to the weight of federal Indian law as developed over many years and will not be sustained if appealed to the United States Supreme Court. Contrary to the Oklahoma court's conclusion, federal Indian law appears to establish that tribal laws regulating activities within Indian country will generally prevail over conflicting state regulatory statutes. Hence, if tribal bingo operations are regulated by the tribe, state regulations which conflict with tribal regulations will be deemed an impermissible interference with tribal self-government and self-determination as fostered by federal Indian policy.

Clearly the subject of state regulation of bingo operations in

Indian country is an evolving and volatile area of law. However, our review of the precedents persuades us that unless and until Congress acts to change the law, state regulation of bingo in Indian country which conflicts with tribal regulation will not be permitted.

The second possible scenario is that the Secretary of the Interior will acquire the property in South Sioux City and hold it in trust for the Omaha Tribe without declaring it a reservation, as authorized by 25 U.S.C. §465. If that were to occur, the question of whether or not the state bingo regulatory act would apply there would turn on a determination of whether such trust land located outside reservation boundaries is "Indian country" in the eyes of the law and under 18 U.S.C. §1151. Unfortunately, the law in this regard is rather unsettled. See, F. Cohen, Handbook of Federal Indian Law, 45 (1982 ed.).

It appears that such trust lands are considered to be "Indian country" when part of a dependent Native American community or when they are used for the federal purpose of residence and support of Native Americans. Id. Otherwise the status of these outside-of-reservation trust lands is uncertain. In Mescalero Apache Tribe v. Jones, supra, the Supreme Court held that income from a ski resort business operated by a tribe and situated on land outside the reservation leased by the tribe from the Forest Service was subject to state taxes. On the other hand, the court in Cheyenne-Arapahoe Tribes v. Oklahoma, 618 F.2d 665 (10th Cir. 1980), held that lands held in trust for Native Americans on a disestablished reservation were still considered to be "Indian country" such that Oklahoma's hunting and fishing laws could not be applied to Native Americans on such trust lands.

Neither Mescalero Apache Tribe nor Cheyenne-Arapahoe Tribes directly addresses the issue of the status of trust lands outside a reservation used for commercial purposes. Therefore, we do not have an opinion as to whether or not such trust lands would be considered "Indian country" for purposes of eliminating state jurisdiction to regulate bingo operations by a tribe located there. We simply point out the very real possibility that, if the Secretary of the Interior acquires the South Sioux City lots in trust for the Omaha Tribe even without declaring them to be a reservation, they might still be "Indian country" so that the Nebraska Bingo and Pickle Card Regulatory Act can have no effect there.

Conclusion

We again caution that Indian law is extremely complex and that there are no simple answers to your inquiries. The outcome in any situation is highly dependent on the unique facts and circumstances of the particular case, so general conclusions may or may not be applicable. With that warning in mind, however, we will summarize

our response.

1. As to law enforcement responsibilities, state and local authorities will have criminal jurisdiction over activities on the land owned by the Omaha Tribe in South Sioux City. Depending upon the status of the land (i.e., whether or not it is "Indian country"), tribal authorities may have concurrent law enforcement jurisdiction. Federal authorities will not have law enforcement responsibilities except for purposes of enforcing applicable federal laws.

2. Nebraska's criminal laws prohibiting certain forms of gambling altogether as against public policy are enforceable against Native Americans in Indian country. Where state criminal jurisdiction has been retroceded to the federal government, such state gambling laws are enforceable indirectly by federal authorities under 18 U.S.C. §1955 which makes it a federal crime to operate a gambling business that is a violation of state law.

3. Nebraska's prohibitory gambling laws may not be enforceable against gambling activities involving only Native Americans on a reservation where criminal jurisdiction has been retroceded.

4. Nebraska's gambling laws which allow certain types of gambling but merely regulate that activity (with incidental criminal penalties to enforce the regulation) are probably not enforceable against Native American tribes in Indian country in the state, whether or not there has been retrocession.

5. The Nebraska Bingo and Pickle Card Regulatory Act is such a regulatory law which allows certain forms of gambling but merely regulates the activity. As such, the Act's provisions are probably not enforceable against Native American tribes conducting bingo operations within Indian country in this state.

6. Depending upon actions taken by the Secretary of the Interior under federal law, lands acquired in South Sioux City by or for the Omaha tribe may be deemed to be "Indian country." If so, the provisions of the Nebraska Bingo and Pickle Card Regulatory Act will probably not be enforceable against the Tribe conducting bingo operations on those lots.

Sincerely,
ROBERT M. SPIRE
Attorney General

(Signed) Charles E. Lowe
Assistant Attorney General

CEL:bae

cc: Patrick J. O'Donnell
Clerk of the Legislature

August 6, 1985

Dear Senator Chambers:

This is in reply to your inquiry as to whether or not a county judge is subject to impeachment in Nebraska.

Although your letter does not specifically state, we assume from the copy of the newspaper article you attached that you are requesting this opinion for a legislative purpose.

As you have indicated, the Constitution of Nebraska has provided a method for disciplining judicial officers of the State, as well as a separate method for disciplining all officers of the State.

Article V, Sections 28-30 provide a method for disciplining a judge of any court of this state through the method of the Judicial Qualifications Commission and review by the Supreme Court of Nebraska, including the authority to permit additional evidence and to make such determination as it finds just and proper. Sections 28-30, discussed above, and Section 31 of Article V were added to the Constitution as a package in 1966. LB 834, Laws of Nebraska, 1965, p. 848.

Section 31 provides in pertinent part: "These amendments are alternative to and cumulative with the methods of removal of Justices and judges provided in Article III, section 17, and Article IV, section 5, of this Constitution . . ."

While there have been some amendments to these sections of the Constitution since that time, there has been no change to Section 31.

Article III, Section 17 of the Constitution, referred to in the portion of the Constitution quoted above, is the section of the Constitution which gives the Legislature the sole power of impeachment of any officer and sets forth the general procedure. In doing so, that section provides for filing a notice of impeachment of any officer, other than a Judge of the Supreme Court, with the Chief Justice, and it further provides that the notice of impeachment of the Chief Justice, or any judge of the Supreme Court, shall be served upon any judge of the judicial district within which the Capitol is located.

It is thus clear that Section 17 refers to judicial officers, as well as executive and legislative officers, since special provision was made for the trial of impeachment resolutions against Supreme Court judges, who would, in other cases, try the case against all other officers.

Article IV, Section 5 of the Constitution, also referred to in Article V, Section 31 quoted in part above, merely states: "All civil officers of this state shall be liable to impeachment for any misdemeanor in office." This particular provision is found in the article concerned with the executive branch of government and does not particularly

add or detract from the foregoing discussion, except the fact that it is referred to in Article V, Section 31.

Should there be any doubt, however, the term "civil officer" is defined in Black's Law Dictionary as follows: "The word 'civil,' as regards civil officers, is commonly used to distinguish those officers who are in public service but not of the military. Hence, any officer of the United States who holds his appointment under the national government, whether his duties are executive or judicial, in the highest or the lowest departments of the government, with the exception of the armed services."

In Ballantyne v. Bower, 99 P. 869 at 871, the court, citing cases from a number of other states, stated: "The phrase 'civil office under the state,' within Const. art. 6, subd. 'Elections,' § 4. providing that every person holding a civil office under the state or any municipality therein shall, unless removed according to law, exercise the duties of such office until his successor is duly qualified, import an office in which is reposed some portion of the sovereign power of the state, having some connection with the legislative, judicial, or executive department of the government. The office of justice of the peace comes within this class."

In State v. Mayes, 54 S.W.2d 941, the Supreme Court of Tennessee stated: "Term 'civil officer' is used in contradistinction to military officer and covers all officers whether their duties are executive, legislative, or judicial."

In light of the foregoing, we are of the opinion that the provisions for disciplining a member of the judiciary under Article V, Sections 28-31 relating to the Judicial Qualifications Commission are not exclusive, but that such person may also be subject to removal by impeachment under Article III, Section 17 of the Nebraska Constitution.

As alluded to in discussing said provisions, the final determination under either or both procedures is left with the Supreme Court of Nebraska as to all judges other than members of that Supreme Court.

Hoping this will be of assistance to you, we are

Very truly yours,
ROBERT M. SPIRE
Attorney General
(Signed) Mel Kammerlohr
Senior Assistant
Attorney General

MK:dr

cc: Patrick J. O'Donnell
Clerk of the Legislature

Opinion No. 128
September 17, 1985

Mr. William R. Giovanni, Director
Department of Administrative Services
State Capitol
Lincoln, Nebraska 68509

Dear Mr. Giovanni:

You have requested the advice of the Attorney General on how to distribute the 8.5 million dollars which the 1985 Legislature approved for payment of the claim against the State of Nebraska on behalf of the Commonwealth depositors in LB 713.

Further legislative action is required to complete the process for payment of the Commonwealth 8.5 million dollar tort claim to the trustee for the depositors. We regret that this is necessary because legislative intent to pay the 8.5 million dollars is perfectly clear. However, under Nebraska law intent alone is not sufficient to authorize the payment. There must also be specific legislative authority stating that the funds to pay the 8.5 million dollar tort claim are appropriated.

This specific and essential appropriation authority language was omitted from the legislative bill approving the payment. Nebraska law does not allow this specific appropriation language to be inferred or implied, no matter how clear the underlying legislative intent may be. And so we have concluded that this 8.5 million dollars has not been appropriated.

Our hearts are heavy as we reach this legal conclusion. We have profound concern for the welfare of the depositors and full awareness of the clear legislative intent for the depositors' trustee to receive these funds. Thus, we have great personal discomfort in reaching this legal conclusion. However, to be true to our constitutional, professional and ethical obligations we must interpret the law as it is, not as we wish it might be.

We cannot bend the law to meet a particular result, no matter how just or desirable that result may be. The Legislature makes our Nebraska laws, not the Attorney General or anyone else. Therefore, further direction must be forthcoming from the 89th Legislature. The Attorney General cannot and will not ignore or try to change through invalid legal interpretation actual Nebraska laws. Our respect for our governmental system based on the sanctity of law requires this approach by us.

Why have we reached this conclusion? The court order which approved this claim was the basis for the legislative action authorizing payment of it. This court order provides that settlement

of the claim is conditional upon the Legislature making a 1985 appropriation for the claim. LB 713 (which authorized payment of this claim) states that the 8.5 million dollars should be transferred from the Cash Reserve Fund to the State General Fund "to pay" the tort claim. It does not contain the requisite appropriation language. Neb.Rev.Stat §49-804 provides that actual appropriations of funds leaving the state treasury can only be made if the Legislature actually appropriates the funds through language specifically referring to the appropriation. Our laws here are perfectly clear. They are designed to provide for a rigid and definite procedure whenever any public funds are actually to be paid out. The goal here is to account for and protect with the greatest care the funds which, as taxpayers, all of us have paid to the state.

What can be done to correct this payment problem as quickly and easily as possible? Should it choose to do so, the Legislature in a brief special session limited solely to appropriating 8.5 million dollars from the State Treasurer's Suspense Fund Number 7999, in order to pay Tort Claim Number 4-302, could correct this obvious problem in the appropriation process. This is all that is necessary. There are expenses and inconvenience involved in holding such a special session. However, these expenses and this inconvenience are the price we pay for our strict adherence to the concept of following our laws exactly as they are enacted by the Legislature, not as we might wish they had been enacted. This concept is basic to the fundamental principle of government by rule of law, not by whim.

The Treasurer has been asked to isolate and segregate the 8.5 million from the General Fund so that any interest that would have gone to Commonwealth depositors effective September 16, 1985, will not be commingled with State General Funds pending a resolution of this dilemma.

Here is the detailed legal basis for the analysis summarized above: LB 713 provides simply that:

The Legislature determines that the settlement of Tort Claim Number 4-302, as asserted against the State of Nebraska by the Receiver for Commonwealth Savings Company, insolvent, and as approved by the district court for Lancaster County, should be allowed and paid in the amount of eight million five hundred thousand dollars as authorized by the State Tort Claims Act.

LB 713 further provides that:

On September 15, 1985, the State Treasurer shall transfer eight million five hundred thousand dollars from the Cash Reserve Fund to the General Fund to pay Tort Claim Number 4-302. Such transfer shall be reversed after July 1, 1986, but before July 15, 1986.

The question was then raised as to whether or not LB 713

constitutes a valid appropriation under state law. Article III, Section 22, of the Nebraska Constitution states that, "Each Legislature shall make appropriations for the expenses of the Government." Article III, Section 25, of the Nebraska Constitution further provides in part that:

No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law, and on the presentation of a warrant issued as the Legislature may direct, and no money shall be diverted from any appropriation made for any purpose or taken from any fund whatever by resolution.

In this regard the Nebraska Supreme Court has said as follows:

The latter section makes necessary a specific appropriation for a particular purpose, and forbids the drawing of a single dollar from the state treasury unless authorized by an appropriation.

Under the Constitution it is not within the province of executive or administrative officers to determine the purpose for which the state's funds may be expended. Only the legislative branch of the government may declare for what purpose and within what amounts state funds may be expended. Any other expenditure than that authorized by the Constitution and valid enactments thereunder is unlawful.

Fischer v. Marsh, 113 Neb. 153 at 156, 202 N.W. 422 (1925). See, also, Rein v. Johnson, 149 Neb. 67 at 78, 30 N.W.2d 548 (1947); and Ruge v. State, 201 Neb. 391 at 396, 267 N.W.2d 748 (1978).

In order to avoid further disputes as to what constitutes a specific appropriation as had arisen in the past, the Legislature in 1979 enacted a law spelling out the necessary requirements for a valid appropriation under the state Constitution. Neb.Rev.Stat. §49-804 (Reissue 1984) provides as follows:

An appropriation shall only exist when the following criteria have been met:

(1) There shall be included the phrase there is hereby appropriated;

(2) A specific fund type shall be identified and the fund shall be appropriated;

(3) The amount to be appropriated from such fund shall be identified;

(4) A specific budget program or a specific statement reflecting the purpose for expending such funds shall be identified; and

(5) The time period during which such funds shall be expended shall be identified.

Neb.Rev.Stat. §49-805 (Reissue 1984) further provides that "Any legislation not meeting the criteria established in section 49-804 shall not be considered a valid appropriation as defined in Article 3,

section 22 of the Nebraska Constitution.”

It is apparent that LB 713 does not contain the necessary phrase required by paragraph 1 of Neb.Rev.Stat. §49-804 “there is hereby appropriated.” In addition, it is questionable whether the requirements of paragraph 2 of that statute are met in that a specific fund type shall be identified and the fund shall be appropriated. On the other hand, the other three requirements of Neb.Rev.Stat. §49-804 have been met by LB 713.

It is clear from LB 713 that the intent of the Legislature was to pay this claim. This expression of intention, however, no matter how sincere on the part of the Legislature, is not enough to constitute a specific appropriation. This is best illustrated in the case of State v. Moore, 50 Neb. 88, 69 N.W. 373 (1896). In that case the Legislature had previously enacted a law providing for the payment of a bounty for the manufacture of sugar from sugar beets in Nebraska. The Legislature did not appropriate any specific funds for this purpose for the year in question. Nevertheless, a manufacturer filed a writ of mandamus compelling the Auditor of Public Accounts to draw a warrant on his behalf. The argument of the claimant was that “having accepted the provisions of the act by manufacturing the sugar for which it claims the bounty, its relations with the state are contractual, and that the state cannot refuse payment, because to do so would be to impair the obligations of its own contract.” Id. at 92.

The Court stated as follows:

There is, however, a broad distinction between the moral, and even in one sense the legal, obligation of a state to make a payment, and the duty or the power of its officers to fulfill that obligation. Under constitutions such as ours an appropriation for the purpose is indispensable to authorize the state's executive officers to make a payment, no matter how great the moral or the legal obligation may be on the part of the state to make such payment. The state being sovereign, while it may incur obligations, there is no method except those by itself established whereby such obligations may be enforced, and it is in general for the legislature by means of an appropriation to recognize an obligation of the state and permit its enforcement. As said in Ristine v. State, 20 Ind., 328: “A promise by the government to pay money is not an appropriation. A duty on the part of the legislature to make an appropriation is not such. A promise to make an appropriation is not an appropriation. The pledge of the faith of the state is not an appropriation of money with which to redeem the pledge. . . .”

Id. at 92-93

The claimant nevertheless contended that the language of the act itself created an appropriation and cited authorities “for the purpose of establishing that to constitute an appropriation the word

'appropriation' or 'appropriate' is not essential; that it is sufficient that an intention to make an appropriation is disclosed by the act." Id. at 94. The Court, however, stated that:

This also may be conceded with the qualification that it is the settled law of this state that there can be no implied appropriation. {Citation omitted.} By that we understand that an appropriation cannot be implied from the fact that the legislature has by law created an obligation to make a payment. In addition to this it must appear that it has provided for the payment by a constitutional appropriation; in other words, the appropriation must be express, although the expression may be in any language evidencing the intent and need not be in any set form of words.

Id. at 94. See, also, State v. Wallich, 15 Neb. 609 at 610, 19 N.W. 641 (1884).

This case was obviously decided prior to the enactment of Neb.Rev.Stat. §49-804, and absent that statute it could be argued that LB 713 does constitute a valid appropriation. The Legislature, however, has seen fit to enact a statute to establish specific requirements for valid appropriations. And in view of the caselaw indicating the necessity for specific appropriations and prohibiting implied appropriations regardless of the moral or legal obligations of the state, we must conclude that the Legislature, while approving the payment of the claim, has failed to make a specific appropriation to implement that payment in this case. Consequently, the money designated in LB 713 cannot at this time be paid out of the state treasury until the Legislature has provided a specific appropriation.

In this regard we would note that the Tort Claims Act, Neb.Rev.Stat. §81-8,224 (Supp. 1984), also provides that "no portion in excess of fifty thousand dollars of any award or judgment shall be paid until such award or judgment has been reviewed by the Legislature and specific appropriation made therefor." This necessity for a specific appropriation was recognized by the parties in the Application for Approval of Settlement filed in Case No. 391-280 in the District Court of Lancaster County, Nebraska, from which this particular claim arises. In that case the court in its order of April 26, 1985, approved the language of the application requiring a "specific appropriation of the funds for this settlement by the Legislature of the State of Nebraska in the 1985 Legislative Session, in accordance with §81-8,224, R.R.S. Neb. . . ." In order to facilitate this particular settlement agreement, it is thus necessary that a specific appropriation be made by the 1985 Legislature. If the Legislature were not to make the necessary appropriation until the 1986 legislative session, the settlement agreement reached by the parties and approved by the court to date will be in question.

In summation, then, there is no specific appropriation pursuant to

the Nebraska Constitution and state law, specifically Neb.Rev.Stat. §49-804 (Reissue 1984), for the claim approved by LB 713. It is therefore incumbent upon the Legislature to make the necessary appropriation before the State Treasurer and the Director of Administrative Services can make any payment of money from the state treasury. At the present time LB 713 only authorizes the transfer of the 8.5 million dollars from the Cash Reserve Fund to the General Fund.

We assure you that our conclusions here are not the result of lawyer nitpicking. The legal issues we have addressed are not mere "technicalities." These issues are fundamental to the Nebraska constitutional and statutory requirements which control the appropriation of public funds. As a personal matter we so wish we could reach a different conclusion. However, the law must dictate our legal judgments, not our personal feelings.

Sincerely,
ROBERT M. SPIRE
Attorney General

RMS:ejg

cc: Patrick J. O'Donnell
Clerk of the Legislature

Opinion No. 129
September 17, 1985

Dear Senator Hannibal:

You have requested our opinion regarding the authority of a municipality to enact an ordinance establishing licensing and regulatory requirements for general building contractors and certain subcontractors doing business in the municipality. The city in question, which would be classified as a city of the first class pursuant to Neb.Rev.Stat. §16-101 (Reissue 1983), has passed an ordinance generally requiring such contractors to pay an annual license or registration fee of \$100.00, and to provide a surety bond and certificate of insurance.

The general rule regarding the authority of a municipality to enact ordinances to regulate and license activities or businesses within its jurisdiction is stated in 51 Am.Jur.2d, Licenses and Permits, §93, p. 94 (1970), as follows:

Under the power to regulate, a municipality may adopt such restrictions as are necessary for the preservation of public health or conducive to the public interest or welfare. One effective mode of regulation commonly adopted by municipalities rests on

enactments that make the carrying on of a specified activity illegal in the absence of a license that is to be issued only on the satisfaction of enumerated requirements. And it is generally held that the power to regulate a particular business, occupation, or article, given to a municipal corporation by the terms of its charter or under general state statutes affecting municipalities, includes the power to require a police regulatory license therefor.

Specifically, with respect to the authority of a municipality to license and regulate building contractors, the following principles are stated in 9 E. McQuillin, The Law of Municipal Corporations, §26.109, p. 240 (3d Ed. 1978):

Under appropriate grant of power and by ordinances not in conflict with state law or licensing, municipal corporations can regulate and license contractors, including building and general contractors, master builders, cement contractors, and, in general, contractors doing business in the building or paving trades. In some states, however, this subject is considered not a municipal affair but a matter of state-wide concern, or for which a comprehensive plan of regulation and licensing is established by statute, covering the entire field of examination, competency, character and responsibility of contractors.

Some jurisdictions have held that, where the regulation and licensing of contractors is required pursuant to state statute, municipalities are prohibited from enacting ordinances imposing additional licensing or regulatory requirements. Agnew v. City of Los Angeles, 110 Cal.App.2d 612, 243 P.2d 73 (1952) (electrical contractors); Collins v. Priest, 95 Cal.App.2d 179, 212 P.2d 269 (1949) (plumbing contractors). Our research, however, reveals no comprehensive statutory scheme of state licensing or regulatory requirements for building contractors in Nebraska.

In Concrete Contractors' Association of Greater Chicago v. Village of La Grange Park, 14 Ill.2d 65, 150 N.E.2d 783 (1958), the Supreme Court of Illinois upheld the validity of two village ordinances requiring the licensing of persons engaged in concrete construction work. Discussing the source of the authority for the villages to impose the licensing requirements, the court stated:

The fact that the villages have not been granted express power to license concrete contractors is not controlling if the General Assembly has expressly granted to the villages one or more powers, the efficient exercise of which requires that the business of the contractors be regulated.

To determine whether defendant villages are impliedly authorized to license persons engaged in cement work, the licensing ordinances must be considered in conjunction with the

powers which are expressly granted and are being lawfully exercised. If the licensing ordinances are reasonably necessary to effectuate the regulations prescribed by other valid ordinances dealing with the same subject matter, they may be sustained as regulatory measures.

Id. at ___, 150 N.E.2d at 785-86. Accord, Village of Maywood v. Weglarz, 24 Ill.App.2d 495, 165 N.E.2d 362 (1960) (upholding validity of licensing and building requirements imposed on carpenter contractors under village ordinance).

The court in Village of La Grange Park, supra, further held the villages had the power to compel payment of a license fee pursuant to the exercise of this regulatory authority, stating:

The power to exact a license fee to defray all or a part of the cost of the regulation or inspection is implicit in the power to regulate.

. . . Ordinances licensing occupations and persons engaged therein have frequently been sustained as implied from one or more statutory powers of regulation.

14 Ill.App.2d at ___, 150 N.E.2d at 786.

Neb.Rev.Stat. §16-234 (Reissue 1983) grants cities of the first class authority to enact ordinances prescribing "the thickness, strength, and manner of constructing stone, brick, and other buildings. . . ." In addition, cities of the first class are granted broad authority to enact ordinances to promote the public safety, health, and welfare under Neb.Rev.Stat. §16-246 (Reissue 1983), which provides, in pertinent part:

A city of the first class may make all such ordinances, bylaws, rules, regulations, and resolutions not inconsistent with the general laws of the state, as may be necessary or expedient, in addition to the special powers otherwise granted by law, for maintaining the peace, good government, and welfare of the city and its trade, commerce, and manufactures, and for preserving order, securing persons or property from violence, danger, and destruction, for protecting public and private property, for promoting the public health, safety, convenience, comfort, morals, and general interests, and welfare of the inhabitants of the city.

The powers granted cities of the first class pursuant to §§16-234 and 16-246 are virtually identical to the statutory grants of authority relied upon to uphold the validity of the licensing ordinances in Village of La Grange Park, supra, and Village of Maywood, supra. Under these circumstances, §§16-234 and 16-246 can be viewed as express grants of power which impliedly authorize cities of the first class to enact licensing and regulatory ordinances applicable to building contractors. Licensing ordinances of this nature can be upheld as reasonably necessary to effectuate the regulatory authority

granted to such municipalities.

We recognize that, in a 1908 decision, the Nebraska Supreme Court held invalid a city ordinance imposing a licensing requirement of persons constructing certain types of sidewalks. Gray v. City of Omaha, 80 Neb. 526, 114 N.W.600 (1908). We believe the decision in Gray, supra, is not in accord with the present majority view regarding the authority of municipalities to enact licensing and regulatory requirements. In our opinion, the Gray case would no longer be considered as binding or valid precedent in determining the validity of municipal regulatory ordinances of this nature.

Finally, we wish to point out, with respect to the propriety of the amount of the licensing fee imposed, it is generally held that the fee charged must not be unreasonable or confiscatory. See generally, 51 Am.Jur.2d, Licenses and Permits, §114, pp. 111-112 (1970); see also, City of Ord v. Biemond, 175 Neb. 333, 122 N.W.2d 6 (1963). The determination of whether a license fee is unreasonable or excessive rests largely on the particular facts regarding the nature of the regulation and the activity involved. On the basis of the factual information provided to us, we cannot say the license fee in question is inherently unreasonable.

Based on the foregoing, it is our opinion that cities of the first class presently possess implied power to enact ordinances establishing licensing and regulatory requirements for building contractors doing business within the municipality's jurisdiction, provided the license fee and requirements imposed are not unreasonable.

Very truly yours,
ROBERT M. SPIRE
Attorney General

(Signed) L. Jay Bartel
Assistant Attorney General

LJB:ejg

cc: Patrick J. O'Donnell
Clerk of the Legislature

Opinion No. 130
September 17, 1985

Dear Senator Vickers:

This is in response to your letter of August 26, 1985, concerning the effect of the LB 662 referendum on the ability of the Legislature to enact changes to current school laws.

In your letter you refer to our previous opinion of July 2, 1985, to Senator John DeCamp. We would also call your attention to our

letter of July 25, 1985, to Senator William E. Nichol, a copy of which is enclosed. More specifically that letter concluded that "After the referendum has been invoked and until the voters have acted thereunder, the subject-matter of the referred bill is withdrawn from further consideration of the Legislature. It can neither amend nor repeal the act during that period." With this as a framework for our response, we will address your specific questions.

Your first question was as follows: "Would any changes in the State aid formula found in sections 79-1333 to 74-1344.01 contravene Article III, section 3?" As you note, LB 662 does not deal with the issue of distribution of school funds which is the subject matter of the above referenced statutes. Likewise, these statutes were not amended or changed in any way by LB 662. Thus, the Legislature would not be prohibited from making changes to these statutes, provided that they do not alter the specific provisions of LB 662.

Your next question is whether "any changes in any of the specific school organization statutes that were amended in LB 662 {would} run afoul of Article III, section 3, if none of the amendatory language is significantly changed?" In particular, you are concerned with changes to Neb.Rev.Stat. §79-701 (Reissue 1981). Based on our previous opinion, we would conclude that you may only alter or amend those portions of the statutes contained in LB 662 that were not otherwise the subject of amendatory changes in the final version of the bill, and then only to the extent that they do not alter any of the specific provisions that were the subject of the changes constituting LB 662.

Your next question refers to the high school tuition laws found in Neb.Rev.Stat. §§79-494 to 79-4,105 (Reissue 1981). These statutes were not specifically amended by LB 662, although you note that nonresident tuition is part of the financing system for public schools. Your question then is whether "the Legislature {is} blocked from addressing any changes in the nonresident high school tuition statutes?" Again, based on our previous opinion, the Legislature would not be prohibited from making changes in these statutes, provided they do not alter any of the specific provisions of LB 662.

You also ask us to define "what would constitute a major change in the subject matter of LB 662?" and whether or not the Legislature could make technical changes in LB 662 not affecting the primary goals of the bill. Based on our most recent opinion and the conclusion contained therein, we believe that any attempt to draw distinctions between "substantive changes" to the provisions of LB 662 is misleading. Simply put, the Legislature is prohibited from amending or repealing any of the specific provisions of LB 662.

Finally you ask whether or not the Legislature could make major changes in the subject matter of LB 662 to take effect after the

November, 1986, referendum election contingent upon the failure of the people to repeal the bill under the referendum. This question was specifically addressed in our letter of July 25, 1985, the answer being no.

Sincerely,
ROBERT M. SPIRE
Attorney General
(Signed) John Boehm
Assistant Attorney General

JB:ejg

enc.

cc: Patrick J. O'Donnell
Clerk of the Legislature

ADJOURNMENT

At 10:33 p.m., on a motion by Speaker Nichol, the Legislature adjourned until 12:01 a.m., Friday, September 20, 1985.

Patrick J. O'Donnell
Clerk of the Legislature

SECOND DAY - SEPTEMBER 20, 1985

LEGISLATIVE JOURNAL

SECOND DAY - SEPTEMBER 20, 1985

LEGISLATIVE JOURNAL

**EIGHTY-NINTH LEGISLATURE
FIRST SPECIAL SESSION**

SECOND DAY

Legislative Chamber, Lincoln, Nebraska
Friday, September 20, 1985

Pursuant to adjournment, the Legislature met at 12:01 a.m., President McGinley presiding.

ROLL CALL

The roll was called and all members were present except Messrs. Chambers, DeCamp, Vickers, and Mrs. Higgins who were excused.

CORRECTIONS FOR THE JOURNAL

The Journal for the First Day was approved.

**NOTICE OF COMMITTEE HEARINGS
Business and Labor**

LB 1	Friday, September 20, 1985	10:00 a.m.
LB 2	Friday, September 20, 1985	10:00 a.m.

(Signed) Bill Barrett, Chairperson

ADJOURNMENT

At 12:05 a.m., on a motion by Speaker Nichol, the Legislature adjourned until 11:30 p.m., Saturday, September 21, 1985.

Patrick J. O'Donnell
Clerk of the Legislature

THIRD DAY - SEPTEMBER 21, 1985

LEGISLATIVE JOURNAL

**EIGHTY-NINTH LEGISLATURE
FIRST SPECIAL SESSION**

THIRD DAY

Legislative Chamber, Lincoln, Nebraska
Saturday, September 21, 1985

Pursuant to adjournment, the Legislature met at 11:30 p.m., President McGinley presiding.

PRAYER

The prayer was offered by Senator Miller.

ROLL CALL

The roll was called and all members were present except Messrs. Carsten, Chambers, Hefner, R. Johnson, Schmit, Vickers, and Mrs. Higgins who were excused.

CORRECTIONS FOR THE JOURNAL

The Journal for the Second Day was approved.

**STANDING COMMITTEE REPORT
Business and Labor**

LEGISLATIVE BILL 1. Placed on General File.

(Signed) Bill Barrett, Chairperson

MESSAGE FROM THE SECRETARY OF STATE

September 20, 1985

Mr. President, Mr. Speaker and
Members of the Legislature

State Capitol
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment requiring legislative confirmation:

Susan M. Symonds, O'Neill, Nebraska 68763, Member of the Nebraska Accountability and Disclosure Commission, for a six year term ending June 30, 1991.

This appointment was made by me, pursuant to the provisions of Sections 49-14106, 40-14111 and 49-14112.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) ALLEN J. BEERMANN
Secretary of State

cc: Susan M. Symonds
Accountability and Disclosure Commission
Senator Elroy M. Hefner

NOTICE OF COMMITTEE HEARING
Government, Military and Veterans Affairs

Governor Appointments Tuesday, September 24, 1985 10:30 a.m.
William Giovanni, Director - Administrative Services Department
Steven Torrence - State Personnel Board

(Signed) David Landis, Chairperson

BILL ON FIRST READING

The following bill was read for the first time by title:

LEGISLATIVE BILL 5. By DeCamp, 40th District.

A BILL FOR AN ACT relating to a tort claim; to amend Laws 1985, LB 713, section 1; to provide an appropriation; to repeal the original section; and to declare an emergency.

UNANIMOUS CONSENT - Print in Journal

Mr. DeCamp asked unanimous consent to print the following amendment to LB 1 in the Journal. No objections. So ordered.

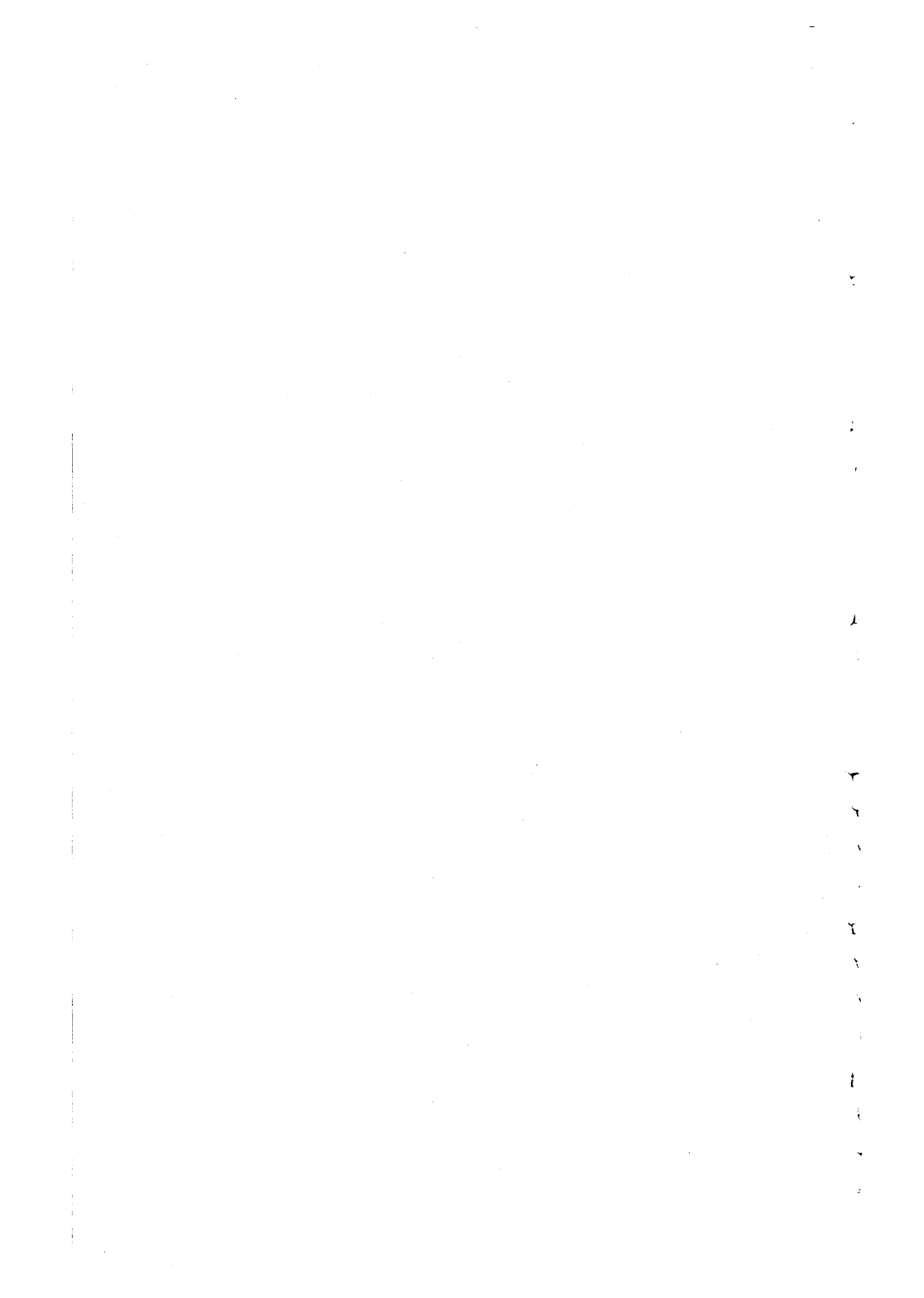
AM002S

- 1 1. Insert the following new sections:
- 2 "Section 1. After carefully considering the
- 3 facts, information, and advice provided to it in
- 4 connection with the insolvency of Commonwealth Savings
- 5 Company, the Legislature determines that Tort Claim
- 6 Number 4-302, as asserted against the State of Nebraska
- 7 by the Department of Banking and Finance, receiver for
- 8 Commonwealth Savings Company, insolvent, in the District
- 9 Court of Lancaster County, does not have a valid legal
- 10 basis and is not meritorious, but that notwithstanding
- 11 such determination, it may be in the best interests of
- 12 the state to effect a complete, final, and binding
- 13 resolution of the matter. The Legislature finds that
- 14 Tort Claim Number 4-302 should be allowed and paid in
- 15 the amount of eight million five hundred thousand
- 16 dollars as full settlement of any and all claims,
- 17 demands, or causes of action relating to Commonwealth
- 18 Savings Company against the State of Nebraska or the
- 19 Department of Banking and Finance or against its past,
- 20 present, and successor officers, officials, agents, or
- 21 employees, either in their official or individual
- 22 capacities.
- 23 Sec. 3. That Laws 1985, LB 713, section 1, is
- 1 repealed."
- 2 2. Renumber remaining sections accordingly.

ADJOURNMENT

At 11:35 p.m., on a motion by Speaker Nichol, the Legislature adjourned until 12:01 a.m., Sunday, September 22, 1985.

Patrick J. O'Donnell
Clerk of the Legislature



FOURTH DAY - SEPTEMBER 22, 1985

LEGISLATIVE JOURNAL

FOURTH DAY - SEPTEMBER 22, 1985

LEGISLATIVE JOURNAL

**EIGHTY-NINTH LEGISLATURE
FIRST SPECIAL SESSION**

FOURTH DAY

Legislative Chamber, Lincoln, Nebraska
Sunday, September 22, 1985

Pursuant to adjournment, the Legislature met at 12:01 a.m., President McGinley presiding.

ROLL CALL

The roll was called and all members were present except Messrs. Carsten, Chambers, Hefner, R. Johnson, Schmit, Vickers, and Mrs. Higgins who were excused.

CORRECTIONS FOR THE JOURNAL

The Journal for the Third Day was approved.

ADJOURNMENT

At 12:05 a.m., on a motion by Speaker Nichol, the Legislature adjourned until 10:00 a.m., Monday, September 23, 1985.

Patrick J. O'Donnell
Clerk of the Legislature

FIFTH DAY - SEPTEMBER 23, 1985**LEGISLATIVE JOURNAL****EIGHTY-NINTH LEGISLATURE
FIRST SPECIAL SESSION****FIFTH DAY**

Legislative Chamber, Lincoln, Nebraska
Monday, September 23, 1985

Pursuant to adjournment, the Legislature met at 10:02 a.m., President McGinley presiding.

PRAYER

The prayer was offered by Dr. Robert Palmer, Westminster Presbyterian Church, Lincoln, Nebraska.

ROLL CALL

The roll was called and all members were present except Messrs. Barrett, Hoagland, Vickers, and Mrs. Higgins who were excused; and Messrs. R. Johnson, Rupp, and Schmit who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the Fourth Day was approved.

GENERAL FILE

LEGISLATIVE BILL 1. Title read. Considered.

Mr. DeCamp renewed his pending amendment, AM002S, found in the Journal on page 51.

Mr. DeCamp asked unanimous consent to withdraw his pending amendment, AM002S. No objections. So ordered.

Mr. Beutler offered the following amendment:

AM008S

- 1 1. Insert the following new section:
- 2 "Sec. 2. The money appropriated in section 1
- 3 of this act shall not be released to the Commonwealth
- 4 Trust Fund Number 6191 in the Department of Banking and
- 5 Finance to pay Tort Claim Number 4-302 until the
- 6 Department of Banking and Finance, Receiver of
- 7 Commonwealth Savings Company, insolvent, executes the
- 8 release included in the settlement approved and issued
- 9 by the District Court of Lancaster County on April 26,
- 10 1985."
- 11 2. Renumber original section 2 as section 3.

Mr. Landis moved the previous question. The question is, "Shall the debate now close?"

Mr. DeCamp requested a roll call vote on the motion to cease debate.

Voting in the affirmative, 27:

Baack	Eret	Johnson, V.	Miller	Sieck
Beutler	Goll	Landis	Morehead	Smith
Beyer	Hall	Lundy	Nelson	Warner
Carsten	Harris	Lynch	Rupp	Wesely
Chizek	Hartnett	Marsh	Scofield	Withem
Conway	Johnson, L.			

Voting in the negative, 11:

Abboud	Goodrich	Labeledz	Peterson	Remmers
Chronister	Haberman	Lamb	Pirsch	Rogers
DeCamp				

Present and not voting, 5:

Chambers	Hannibal	Hefner	Nichol	Pappas
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Excused and not voting, 6:

Barrett	Hoagland	Johnson, R.	Schmit	Vickers
Higgins				

The motion to cease debate prevailed with 27 ayes, 11 nays, 5 present and not voting, and 6 excused and not voting.

The Beutler amendment lost with 17 ayes, 21 nays, 5 present and not voting, and 6 excused and not voting.

EASE

The Legislature was at ease from 11:24 a.m. until 11:31 a.m.

SPEAKER NICHOL PRESIDING

GENERAL FILE

LEGISLATIVE BILL 1. Considered.

Advanced to E & R for Review with 32 ayes, 9 nays, 2 present and not voting, and 6 excused and not voting.

ATTORNEY GENERAL'S OPINION

Opinion No. 131
September 23, 1985

Dear Senators DeCamp and Beutler:

You have requested our opinion regarding whether the provisions of LB 2, introduced at the recently convened special session, extend beyond the scope of the Governor's call.

Article IV, Section 8, of the Nebraska Constitution provides:

The Governor may, on extraordinary occasions, convene the Legislature by proclamation, stating therein the purpose for which they are convened, and the Legislature shall enter upon no business except that for which they were called together.

The last portion of this constitutional provision places an express limitation on the power of the Legislature to act at a special session. In Arrow Club, Inc. v. Nebraska Liquor Control Commission, 177 Neb. 686, 689, 131 N.W.2d 134, 137 (1964), the court, discussing this limitation, stated:

It is well established that the Legislature while in special session can transact no business except that for which it was called together. Chicago, B. & Q.R.R. Co. v. Wolfe, 61 Neb. 502, 86 N.W. 441. The proclamation may state the purpose for which the Legislature is convened in broad, general terms or it may limit the consideration to a specified phase of a general subject. The Legislature is free to determine in what manner the purpose shall be accomplished, but it must confine itself to the matters submitted to it by the proclamation.

The proclamation issued by the Governor states the Legislature has been called into session

. . . for the purpose of considering the sole subject:

1. Transferring \$8.5 million plus any accrued interest from Suspense Fund #7999 to the Commonwealth Trust Fund #6191 in order to appropriate that sum, so that tort claim #4-302 identified and approved in LB 713 of the 1st Session of the 89th Legislature may be paid.

The call is specifically limited to the consideration of whether or not the Legislature will act to validly appropriate the funds referred to in LB 713, to allow payment of the tort claim asserted against the state by the Receiver for Commonwealth Savings Company. LB 2, however, contains provisions which, in our opinion, extend beyond the subject matter outlined in the Governor's call. While Section 2 of LB 2 does contain language providing for the appropriation of funds in payment of the tort claim, Section 1 of the bill adds language expressing a legislative intent to essentially disclaim any state liability in connection with the tort claim, and providing that payment of the claim would constitute "full settlement of any and all claims, demands, or causes of action" against the state relating to the Commonwealth matter. In addition, Section 2 of LB 2 imposes a requirement that, before the State Treasurer may disburse the \$8.5 million appropriated, the Lancaster County District Court must certify that the appropriation comports with the terms of the settlement agreement approved by the court. Section 3 of LB 2 would repeal the provisions of Section 1 of LB 713.

Based on the foregoing, we must conclude that LB 2 contains provisions which extend beyond the scope of the subject matter outlined in the Governor's call, and is not, in our opinion, authorized business under Article IV, Section 8, of the Nebraska Constitution.

The need to call the Legislature into special session was obviously prompted by our recent determination that LB 713 failed to contain certain language essential to the making of a valid and lawful appropriation of state funds. While we recognize the call is worded in a specific manner, we note that this is a unique situation. The clear intent and purpose of the Governor's call is solely to provide the Legislature the opportunity to correct a technical drafting error in the language utilized in LB 713. This is not a case in which the specific nature of the call would operate to unduly restrict the Legislature in enacting substantive legislation of general applicability. Under these circumstances, we feel the scope of the call, limiting consideration to the specific question of whether the Legislature will act to correct this technical error and lawfully appropriate the funds referred to in LB 713, is valid.

Very truly yours,
ROBERT M. SPIRE
Attorney General
(Signed) L. Jay Bartel
Assistant Attorney General

LJB:bae
cc: Patrick J. O'Donnell
Clerk of the Legislature

VISITORS

Visitors to the Chamber were members of the YMCA Y-Pals: Rowdy Anderson, Angie Cisneros, and Jack Delancy.

RECESS

At 11:45 a.m., on a motion by Mrs. Nelson, the Legislature recessed until 2:00 p.m.

AFTER RECESS

The Legislature reconvened at 2:02 p.m., President McGinley presiding.

ROLL CALL

The roll was called and all members were present except Messrs. Barrett, Beyer, Hoagland, V. Johnson, Vickers, and Mrs. Higgins who were excused; and Messrs. Goodrich, Hannibal, R. Johnson, Schmit, and Sieck who were excused until they arrive.

REFERENCE COMMITTEE REPORT

The Legislative Council Executive Board submits the attached report on the referral of Gubernatorial appointment.

Miscellaneous Subjects

Susan M. Symonds - Nebraska Accountability
and Disclosure Commission

(Signed) Chris Beutler, Chairperson
Legislative Council
Executive Board

SELECT COMMITTEE REPORT
Enrollment and Review

LEGISLATIVE BILL 1. Placed on Select File.

(Signed) Timothy Hall, Chairperson

SELECT FILE

LEGISLATIVE BILL 1. Mr. DeCamp offered the following amendment:

AM014S

- 1 1. On page 2, strike beginning with the
- 2 second comma in line 14 through "County" in line 16.
- 3 2. Insert the following new sections:
- 4 "Sec. 2. It is the intent of the Legislature
- 5 that this appropriation be in accordance with the
- 6 settlement release approved by the District Court of
- 7 Lancaster County on April 26, 1985, which is as follows:
- 8 The Department of Banking and Finance of the
- 9 State of Nebraska, Receiver of Commonwealth Savings
- 10 Company, on behalf of itself, its successors and
- 11 assigns, holders of all certificates of indebtedness and
- 12 all other creditors of Commonwealth Savings Company,
- 13 pursuant to authority granted to it by the District
- 14 Court of Lancaster County, Nebraska, does hereby release
- 15 the State of Nebraska and all of its past, present and
- 16 successor officers, officials, agents or employees in
- 17 their official and individual capacities, related
- 18 directly or indirectly to their employment or duties
- 19 with the State of Nebraska which relate to Commonwealth
- 20 Savings Company, and the Department of Banking and
- 21 Finance, and all of its past, present and successor
- 22 officers, officials, agents or employees, in their
- 23 official and individual capacities, related directly or
- 1 indirectly to their employment or duties with the State
- 2 of Nebraska which relate to Commonwealth Savings
- 3 Company, from any and all claims, demands or causes of
- 4 action, which now exist, whether known or unknown,
- 5 whether arising by virtue of state or federal
- 6 constitutions, statutes, regulations, administrative
- 7 rule or otherwise, or as a result of common law. It is
- 8 specifically the intent to release the State of Nebraska
- 9 from any and all claims of legal liability from any
- 10 claims, allegations or causes of action, arising out of

11 the creation, operation, existence, actions or
12 activities of the NDIGC and to release individuals and
13 other entities to the extent said individuals and
14 entities were acting as employees or agents of the State
15 of Nebraska with respect to the creation, operation,
16 existence, actions or activities of NDIGC. This release
17 is given in consideration for the payment of the sum of
18 Eight Million Five Hundred Thousand Dollars
19 (\$8,500,000.00) to the Department of Banking and Finance
20 of the State of Nebraska as Receiver of Commonwealth
21 Savings Company, Insolvent, and its successors and
22 assigns.

23 It is specifically understood and agreed that
24 this release shall not prejudice or prevent the
25 Department of Banking and Finance of the State of
26 Nebraska as Receiver of Commonwealth Savings Company
1 from attempting to obtain an additional appropriation
2 from the Legislature of the State of Nebraska as such
3 legislative body may in its discretion determine to be
4 appropriate in the public interest or to meet any moral
5 obligations of the State of Nebraska. It being
6 specifically understood and agreed that this release is
7 not conditioned upon any such appropriation being made
8 nor is it subject to any such appropriation being
9 constitutionally and legally valid.

10 DATED this day of, 1985.

11 THE DEPARTMENT OF BANKING
12 AND FINANCE OF THE STATE
13 OF NEBRASKA, RECEIVER OF
14 COMMONWEALTH SAVINGS
15 COMPANY, Insolvent

16 BY:
17 Director of the Department
18 of Banking and Finance,
19 and Receiver.

20 Sec. 3. If any section in this act or any
21 part of any section shall be declared invalid or
22 unconstitutional, such declaration shall not affect the
23 validity or constitutionality of the remaining portions
24 thereof.”

25 3. Renumber original section 2 as section 4.

Mr. Haberman requested a record vote on the DeCamp amendment.

Voting in the affirmative, 30:

Abboud	Conway	Hartnett	Nelson	Rogers
Baack	DeCamp	Hefner	Nichol	Rupp
Beutler	Eret	Johnson, L.	Pappas	Scofield
Carsten	Goll	Lamb	Peterson	Smith
Chizek	Haberman	Lynch	Pirsch	Warner
Chronister	Harris	Marsh	Remmers	Wesely

Voting in the negative, 5:

Chambers	Hall	Labeledz	Morehead	Withem
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Present and not voting, 4:

Landis	Lundy	Miller	Sieck
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Excused and not voting, 10:

Barrett	Goodrich	Higgins	Johnson, R.	Schmit
Beyer	Hannibal	Hoagland	Johnson, V.	Vickers

The DeCamp amendment was adopted with 30 ayes, 5 nays, 4 present and not voting, and 10 excused and not voting.

Mr. Chambers offered the following amendment:

Add new section. "That LB 496, 89th Legislature, First Session, is repealed."

Mrs. Morehead requested a ruling of the Chair on whether the Chambers amendment is germane to the bill or whether it is within the scope of the Governor's Call into Special Session.

The Chair ruled the Chambers amendment is not within the Call.

Mr. Chambers challenged the ruling of the Chair. The question is, "Shall the Chair be overruled?"

SPEAKER NICHOL PRESIDING

Mrs. Marsh moved the previous question. The question is, "Shall the debate now close?"

Mr. Haberman requested a roll call vote on the motion to cease debate.

Voting in the affirmative, 33:

Abboud	Eret	Lamb	Nichol	Rupp
Baack	Goll	Landis	Pappas	Scofield
Beutler	Hall	Lundy	Peterson	Smith
Carsten	Harris	Marsh	Pirsch	Warner
Chizek	Hefner	Miller	Remmers	Wesely
Conway	Johnson, L.	Morehead	Rogers	Withem
DeCamp	Labedz	Nelson		

Voting in the negative, 3:

Chambers Chronister Haberman

Present and not voting, 3:

Hartnett Lynch Sieck

Excused and not voting, 10:

Barrett	Goodrich	Higgins	Johnson, R.	Schmit
Beyer	Hannibal	Hoagland	Johnson, V.	Vickers

The motion to cease debate prevailed with 33 ayes, 3 nays, 3 present and not voting, and 10 excused and not voting.

The Chambers motion to overrule the Chair lost with 12 ayes, 24 nays, 3 present and not voting, and 10 excused and not voting.

Messrs. Chronister and Goll asked unanimous consent to be excused. No objections. So ordered.

Mr. Haberman offered the following amendment:

To amend LB 1. Amendment to read that physicians in the state of Nebraska will not be held liable for issuing physical handicapped releases from the use of seat belts.

Mr. Beutler requested a ruling of the Chair on whether the Haberman amendment is within the scope of the Governor's Call into Special Session.

The Chair ruled the Haberman amendment is not within the Call.

Mr. Chambers challenged the ruling of the Chair. The question is "Shall the Chair be overruled?"

Mrs. Morehead moved the previous question. The question is, "Shall the debate now close?" The motion prevailed.

Mr. Haberman requested a roll call vote on the motion to overrule the Chair.

Voting in the affirmative, 8:

Abboud	Haberman	Pappas	Pirsch	Rogers
Chambers	Labedz	Peterson		

Voting in the negative, 23:

Baack	Harris	Marsh	Remmers	Smith
Beutler	Hefner	Miller	Rupp	Warner
Chizek	Johnson, L.	Morehead	Scofield	Wesely
Conway	Landis	Nelson	Sieck	Withem
Hall	Lundy	Nichol		

Present and not voting, 6:

Carsten	Eret	Hartnett	Lamb	Lynch
DeCamp				

Excused and not voting, 12:

Barrett	Goll	Higgins	Johnson, R.	Schmit
Beyer	Goodrich	Hoagland	Johnson, V.	Vickers
Chronister	Hannibal			

The motion to overrule the Chair lost with 8 ayes, 23 nays, 6 present and not voting, and 12 excused and not voting.

Mr. Haberman requested a roll call vote on the advancement of the bill.

Voting in the affirmative, 30:

Baack	Hall	Lamb	Nelson	Scofield
Beutler	Harris	Landis	Nichol	Sieck
Chambers	Hartnett	Lynch	Pirsch	Smith
Chizek	Hefner	Marsh	Remmers	Warner
Conway	Johnson, L.	Miller	Rogers	Wesely
DeCamp	Labedz	Morehead	Rupp	Withem

Voting in the negative, 5:

Abboud Haberman Lundy Pappas Peterson

Present and not voting, 2:

Carsten Eret

Excused and not voting, 12:

Barrett Goll Higgins Johnson, R. Schmit
Beyer Goodrich Hoagland Johnson, V. Vickers
Chronister Hannibal

Advanced to E & R for Engrossment with 30 ayes, 5 nays, 2 present and not voting, and 12 excused and not voting.

NOTICE OF COMMITTEE HEARING **Miscellaneous Subjects**

Sec. of State Appointment Tuesday, September 24, 1985 2:00 p.m.
Susan M. Symonds - NE Accountability and Disclosure Commission

Governor Appointments Tuesday, September 24, 1985 2:00 p.m.
Lynn V. Ferer - NE Accountability and Disclosure Commission
Don Dworak - NE Liquor Control Commission
Lewis E. Trowbridge - NE Arts Council

(Signed) Elroy M. Hefner, Chairperson

REPORT OF REGISTERED LOBBYISTS

In accordance with LB 987, passed in the 1976 session of the Legislature and amended by LB 4 and LB 41 in the 1977 session of the Legislature, the attached is a list of all Lobbyists who have registered as of September 22, 1985. Further lists listing additional lobbyists who have registered will be filed weekly.

(Signed) Patrick J. O'Donnell
Clerk of the Legislature

Alexoff, Carl - North Brunswick, NJ, Webcraft Games, Inc.
Badura, Margaret Ann - Lincoln, (Withdrawn 85/06/30), Nebraska
Democratic Party

- Dempsey, Mary Louise - Lincoln, (Withdrawn 85/09/17), Nebraska Republican Party
- Downing, William - North Brunswick, NJ, Webcraft Games, Inc.
- Erickson & Sederstrom
- Albers, Larry V. - Lincoln, (Withdrawn 85/06/06), Nebraska State College System
- Frey, John O. - Lincoln, (Withdrawn 85/08/14), Lincoln Telecommunications Company
- Horton, Victoria G. - Lincoln, AT&T Information Systems (Withdrawn 85/06/13); Nebraska Dental Assistants Association (Withdrawn 85/06/13); Nebraska Wholesale Liquor Distributors Association (Withdrawn 85/06/30)
- Lineweber, Ray L. - Lincoln, Nebraska Livestock Markets Association (Withdrawn 85/07/18); Webcraft Games, Inc.
- Martin, Richard W. - Lincoln, American Petroleum Institute; Nebraska Association of Commerce & Industry (Withdrawn 85/07/08)
- Meyer, Daniel W. - Lincoln, McBride and Associates (Withdrawn 85/07/15); Nebraska Travel Industry Council (Withdrawn 85/07/15)
- Miller, Morris F. - Omaha, (Withdrawn 85/06/28), Nebraska Dept. of Banking & Finance, Receiver for Commonwealth Savings Co., Inc., Insolvent
- Nelson & Harding
- Alexander, Hugh - Lincoln, (Withdrawn 85/07/22), MCI Telecommunications Corporations; Nebraska Coalition of 202 Projects; Nucor Corporation; RMC Transportation, Inc.
- Palmer, Steven C. - North Brunswick, NJ, Webcraft Games, Inc.
- Parker, David R. - Lincoln, Harris Laboratories, Inc.
- Pratt, Barbara Hanson - Lincoln, (Withdrawn 85/06/21), Nebraska Technical Community College Association
- Tews & Radcliffe
- Radcliffe, Walter H. - Lincoln, Lincoln Citizens for Equitable Taxation (Withdrawn 85/06/15); Nebraska Sheriffs' Association (Withdrawn 85/06/15); Scientific Games, Inc.; Video Consultants of Nebraska, Inc. (Withdrawn 85/06/21)
- Rasmussen, Dennis - Lincoln, Developmental Services Corporation (Withdrawn 85/09/01); Western Retail Implement and Hardware Association
- Robak, Kim M. - Lincoln, Harris Laboratories, Inc.
- Ryan, Carey - Omaha, (Withdrawn 85/07/01), Legislative Coalition for Children
- Ryan, James E. - Lincoln, Farmers Mutual Insurance Company of Nebraska (Withdrawn 85/06/06); Great West Casualty Company (Withdrawn 85/06/06); Nebraska Sheriffs' Association (Withdrawn

85/06/06); Taxpayers for Video Lottery (Withdrawn 85/06/06)
Sturner, Peter C. & Associates
Sturner, Barbara A. - Lincoln, Nebraska Head Injury Association
Willford, Alexander G. - Kearney, (Withdrawn 85/09/11), Kearney
State College, Student Senate
Zanolli, Claudia - Lincoln, (Withdrawn 85/09/16), Nebraska
Association of Community Mental Health Centers; Nebraska
Association of Public Employees; Nebraska State Student
Association

EASE

The Legislature was at ease from 3:46 p.m. until 4:05 p.m.

SELECT COMMITTEE REPORTS

Enrollment and Review

Correctly Engrossed

The following bill was correctly engrossed: LB 1.

(Signed) Timothy Hall, Chairperson

Enrollment and Review Change to LB 1

The following changes, required to be reported for publication in the Journal, have been made:

ER0109

1. On page 1, line 5, "to state intent; to provide severability;" has been inserted after the semicolon.

(Signed) Mary Sommermeyer
E & R Attorney

ADJOURNMENT

At 4:07 p.m., on a motion by Mr. Baack, the Legislature adjourned until 10:00 a.m., Tuesday, September 24, 1985.

Patrick J. O'Donnell
Clerk of the Legislature

SIXTH DAY - SEPTEMBER 24, 1985

LEGISLATIVE JOURNAL

SIXTH DAY - SEPTEMBER 24, 1985

LEGISLATIVE JOURNAL

**EIGHTY-NINTH LEGISLATURE
FIRST SPECIAL SESSION**

SIXTH DAY

Legislative Chamber, Lincoln, Nebraska
Tuesday, September 24, 1985

Pursuant to adjournment, the Legislature met at 10:03 a.m., President McGinley presiding.

PRAYER

The prayer was offered by Dr. Robert Palmer, Westminster Presbyterian Church, Lincoln, Nebraska.

ROLL CALL

The roll was called and all members were present except Messrs. Barrett, Eret, Goll, Hartnett, Hoagland, R. Johnson, V. Johnson, Mesdames Higgins, Labedz, and Pirsch who were excused.

CORRECTIONS FOR THE JOURNAL

Page 57, line 26, strike "Gubernatorial" and insert "Secretary of State".

The Journal for the Fifth Day was approved as corrected.

RESOLUTION

LEGISLATIVE RESOLUTION 1.

Introduced by Warner, 25th District; Vickers, 38th District; Remmers, 1st District; Lamb, 43rd District; Nichol, 48th District.

WHEREAS, two claims have been filed against the State of Nebraska as a result of the insolvency of Commonwealth Savings Company, one of such claims resulting in a settlement appropriation

by the Nebraska Legislature in the amount of \$8,500,000, and

WHEREAS, at least two other state chartered financial institutions, namely, State Security Savings Company, and American Savings Company, have failed and, because of their status as Industrial Loan and Investment Companies, and because the funds deposit there were guaranteed by the NDIGC, and possibly as a result of activities by individuals associated either directly or indirectly with either or both of the above institutions, future claims may be filed against the State of Nebraska based upon the same or similar circumstances or theories of liability or guilt which supported the claims filed by the Receiver of Commonwealth Savings Company; and

WHEREAS, it would be prudent for the Nebraska Legislature to study all aspects of any potential liability, exposure, or responsibility of the State of Nebraska with regard to the failure of State Security Savings Company and American Savings Company and other financial institutions chartered by the State of Nebraska whose deposits were insured by the NDIGC.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE EIGHTY-NINTH LEGISLATURE OF NEBRASKA, SPECIAL SESSION:

1. That the Nebraska Legislature's Banking, Commerce and Insurance Committee together with four additional members of the Legislature to be appointed by the Legislature's Executive Board conduct a complete study and investigation to carry out the purposes of this resolution which are to determine any liability or potential liability or responsibility of the State of Nebraska with regard to the failure of State Security Savings Company and American Savings Company and to determine all aspects of propriety or impropriety of conduct by any or all public officials who in any way were directly or indirectly connected to, affiliated with or involved with State Security Savings Company or American Savings Company; and

2. That this Committee shall have such reasonable and necessary support from the Legislative Council as is appropriate and necessary to do the study and investigation sought by this resolution; and

3. That the Committee shall, upon the conclusion of its work, make a detailed report of its findings, together with any recommendations for legislation or other official action, to the Legislative Council and the Legislature of the State of Nebraska; and

4. That this Committee shall have until the 1st day of March, 1986 to complete its work on this matter unless such date is altered or changed by the Legislature of the State of Nebraska by a majority vote.

Referred to the Executive Board.

ADJOURNMENT

At 10:14 a.m., on a motion by Speaker Nichol, the Legislature adjourned until 9:00 a.m., Wednesday, September 25, 1985.

Patrick J. O'Donnell
Clerk of the Legislature

SEVENTH DAY - SEPTEMBER 25, 1985**LEGISLATIVE JOURNAL****EIGHTY-NINTH LEGISLATURE
FIRST SPECIAL SESSION****SEVENTH DAY**

Legislative Chamber, Lincoln, Nebraska
Wednesday, September 25, 1985

Pursuant to adjournment, the Legislature met at 9:02 a.m., President McGinley presiding.

PRAYER

The prayer was offered by Dr. Robert Palmer, Westminster Presbyterian Church, Lincoln, Nebraska.

ROLL CALL

The roll was called and all members were present except Messrs. Barrett, Goll, Landis, and Mrs. Higgins who were excused; and Mr. Schmit who was excused until he arrives.

CORRECTIONS FOR THE JOURNAL

The Journal for the Sixth Day was approved.

PROPOSED RULE CHANGE

Messrs. Hartnett and Lynch asked unanimous consent to print the following proposed rule change in the Journal. No objections. So ordered.

Amend Rule 3, Sec. 1, Subsection (b): Add one additional sentence that reads as follows:

"A committee's particular jurisdiction shall also include review of the budgets of agencies, boards, and commissions reasonably encompassed in its subject matter jurisdiction and referred to it by the reference committee."

Amend Rule 3, Sec. 4, Subsection (e) (i): Amend it to read as follows:

“(i) The Executive Board shall constitute the Reference Committee. The Reference Committee shall review each bill, resolution, and agency, board, and commission budget, and either refer the matter to the appropriate committee or to General File. The appropriate committee is that committee which has subject-matter jurisdiction over the issue or which has traditionally handled the issue.”

Amend Rule 5, Sec. 6: Add new subsection “1”, which shall read as follows:

“(1) The Fiscal Analyst shall, as required by the Executive Board, provide assistance to the standing committees in their budget review process as provided in Rule 8 herein.”

Amend Rule 8, Sec. 1: Add new item “(3)” to list of first two, which shall read as follows:

“...and (3) provide for the efficient and effective use of state revenue by utilizing standing committee subject-matter expertise in the review of agency, board, and commission budget requests.”

Amend Rule 8: Make current Sec. 4 the new Sec. 5, and add the following provisions as the new Sec. 4:

Sec. 4 STANDING COMMITTEE APPROPRIATIONS REVIEW (a) Following the referencing of agency, board, and commission budgets to the standing committees, but in no event later than the 60th Legislative Day in a 90 day session and the 40th Legislative Day in a 60 day session, each standing committee shall hold a budget request review hearing on the agency, board, and commission budgets referred to it, and shall make recommendations with regard to proposed appropriations to the Appropriations Committee.

(b) The Chairperson of each committee with the assistance of the legislative staff and the Fiscal Analyst shall, when the budget review hearing on each agency, board, and commission is complete, submit a standing committee appropriations review statement which shall contain, but need not be limited to, the following information:

- (1) the identity of the agency, board, or commission budget reviewed,
- (2) the date of the hearing,
- (3) a list of all the individuals testifying with regard to the budget,
- (4) a summary of requested and proposed changes to the original agency, board, or commission budget, and
- (5) a summary and explanation of standing committee recommendations on the agency, board, or commission

budget in such form as the standing committee deems appropriate.

(c) A copy of the proposed standing committee appropriations review statement shall be distributed to each committee member within five days after final committee action on the budget review hearing has been taken by the committee. A minority or concurring statement bearing the signature or signatures of its proponents and setting forth objections to the standing committee appropriations review statement may be filed by its author(s) with the Clerk of the Legislature at any time prior to the first hearing of the Appropriations Bill on General File.

(d) A copy of the standing committee appropriations review statement and any minority statements submitted shall be distributed to each Senator after filing one copy with the Appropriations Committee Chairman and one with the Clerk of the Legislature. Distribution to senators shall be the responsibility of the Clerk of the Legislature.

(e) The Appropriations Committee shall review each standing committee appropriations review statement prior to final action by the Appropriations Committee and placement of the appropriations bills on General File. The Appropriations Committee shall not be bound to adopt the recommendations in the standing committee appropriations review statement except as it deems proper.

Referred to the Rules Committee.

EASE

The Legislature was at ease from 9:07 a.m. until 10:10 a.m.

MOTION - Approve Appointments

Mr. Abboud moved the adoption of the report of the Government, Military and Veterans Affairs Committee for the following Governor appointments found in the Journal on page 50: William Giovanni - Director, Department of Administrative Services; and Steven Torrence - State Personnel Board.

Voting in the affirmative, 42:

Abboud	Carsten	Conway	Haberman	Hefner
Baack	Chambers	DeCamp	Hall	Hoagland
Beutler	Chizek	Eret	Harris	Johnson, L.
Beyer	Chronister	Goodrich	Hartnett	Johnson, R.

Johnson, V.	Miller	Peterson	Schmit	Vickers
Labedz	Morehead	Pirsch	Scofield	Warner
Lamb	Nelson	Remmers	Sieck	Wesely
Lundy	Nichol	Rupp	Smith	Withem
Marsh	Pappas			

Voting in the negative, 0.

Present and not voting, 3:

Hannibal	Lynch	Rogers
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Excused and not voting, 4:

Barrett	Goll	Higgins	Landis
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These appointments were confirmed with 42 ayes, 0 nays, 3 present and not voting, and 4 excused and not voting.

Mr. Hefner moved the adoption of the report of the Miscellaneous Subjects Committee for the following Governor and Secretary of State appointments found in the Journal on page 63:

Governor's Appointments:

Don Dworak - Liquor Control Commission

Lewis Trowbridge - Arts Council

Lynn V. Ferer - Accountability and Disclosure Commission

Secretary of State Appointment:

Susan M. Symonds - Accountability and Disclosure Commission

Voting in the affirmative, 44:

Abboud	DeCamp	Hoagland	Miller	Rupp
Baack	Eret	Johnson, L.	Morehead	Schmit
Beutler	Goodrich	Johnson, R.	Nelson	Scofield
Beyer	Haberman	Johnson, V.	Nichol	Sieck
Carsten	Hall	Labedz	Pappas	Vickers
Chambers	Hannibal	Lamb	Peterson	Warner
Chizek	Harris	Lundy	Pirsch	Wesely
Chronister	Hartnett	Lynch	Remmers	Withem
Conway	Hefner	Marsh	Rogers	

Voting in the negative, 0.

Present and not voting, 1:

Smith

Excused and not voting, 4:

Barrett Goll Higgins Landis

These appointments were confirmed with 44 ayes, 0 nays, 1 present and not voting, and 4 excused and not voting.

MOTION - Suspend Rules

Speaker Nichol moved to suspend the rules, Rule 6, Sec. 7(b), to permit consideration of LB 1 on Final Reading today.

The motion prevailed.

BILL ON FINAL READING

The following bill was read and put upon final passage:

LEGISLATIVE BILL 1. With Emergency.

A BILL FOR AN ACT relating to appropriations; to acknowledge a transfer; to provide for a transfer; to appropriate funds to aid in carrying out the provisions of Legislative Bill 713, Eighty-ninth Legislature, First Session, 1985; to state intent; to provide severability; and to declare an emergency.

Mr. DeCamp raised a point of order requesting that LB 1 be re-read more slowly.

The Chair ruled the point was not in order.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?' "

Voting in the affirmative, 34:

Baack	Chizek	Hannibal	Johnson, R.	Miller
Beutler	Chronister	Harris	Johnson, V.	Morehead
Beyer	Conway	Hartnett	Labeledz	Nelson
Carsten	Eret	Hefner	Lynch	Pirsch
Chambers	Hall	Hoagland	Marsh	Rogers

Rupp	Scofield	Smith	Warner	Withem
Schmit	Sieck	Vickers	Wesely	

Voting in the negative, 10:

Abboud	Goodrich	Johnson, L.	Lundy	Peterson
DeCamp	Haberman	Lamb	Pappas	Remmers

Present and not voting, 1:

Nichol

Excused and not voting, 4:

Barrett	Goll	Higgins	Landis
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A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

PRESIDENT SIGNED

While the Legislature was in session and capable of transacting business, the President signed the following bill: LB 1.

UNANIMOUS CONSENT - Member Excused

Mr. V. Johnson asked unanimous consent to be excused. No objections. So ordered.

RESOLUTION

LEGISLATIVE RESOLUTION 2.

Introduced by DeCamp, 40th District; R. Johnson, 34th District.

WHEREAS, Sundry Economic Projections, actual collections of taxes, data flowing in to all legislators and the governor on the failing condition of the farm economy which is a fundamental economic barometer of the future condition of the State, all strongly indicate that goals and projections necessary to meet the State's budget expenditures without a tax increase will not be able to be met; and

WHEREAS, the shortfalls could amount to approximately \$60 million or more, and

WHEREAS, if it is the intention of public officials to make

significant cuts or changes in spending patterns to adapt to this declining revenue situation such cuts or changes in spending patterns should be made well prior to January 1, 1986, so that they can be imposed in the current fiscal year rather than later; and

WHEREAS, the only way to accomplish such cuts is through legislative action which requires a special session of the Legislature; and

WHEREAS, attempts by the Governor to even obtain voluntary cuts of only \$12 million have proved impossible or unrealistic; and

WHEREAS, changes or cuts in spending patterns adopted now will result in additional savings for the next fiscal year because the amounts cut now will then also not be in the base for next fiscal year's expenditures.

NOW, THEREFORE, BE IT RESOLVED BY THE EIGHTY-NINTH LEGISLATURE OF NEBRASKA, SPECIAL SESSION:

1. That the legislators who endorse and support this resolution hereby go on record as requesting that the Governor call a special session within the reasonable future and yet in 1985 so that the changes in spending patterns and cuts can be implemented and laid in place prior to the 1986 legislative session beginning in January.

Mr. DeCamp moved to suspend the rules, Rule 4, Sec. 6 to permit consideration of LR 2 today.

Mr. Chambers raised a point of order on whether legislative resolutions could be considered within the scope of the Call.

The Chair ruled that the consideration of legislative resolutions is appropriate in a special session.

Mr. Chambers moved to adjourn. The motion lost with 14 ayes, 26 nays, 4 present and not voting, and 5 excused and not voting.

The DeCamp motion to suspend the rules lost with 18 ayes, 14 nays, 12 present and not voting, and 5 excused and not voting.

LR 2 was laid over.

PRESENTED TO THE GOVERNOR

Presented to the Governor on September 25, 1985, at 10:39 a.m., was the following bill: LB 1.

(Signed) Pam Moravec, Enrolling Clerk

RESOLUTION

LEGISLATIVE RESOLUTION 3.

Introduced by Nelson, 35th District; Abboud, 12th District; Baack, 47th District; Beutler, 28th District; Carsten, 2nd District; Chizek, 31st District; Chronister, 18th District; Conway, 17th District; Haberman, 44th District; Hall, 7th District; Harris, 27th District; Hefner, 19th District; Hoagland, 6th District; L. Johnson, 15th District; V. Johnson, 8th District; Labedz, 5th District; Lundy, 36th District; Marsh, 29th District; Miller, 37th District; Nichol, 48th District; Remmers, 1st District; Rupp, 22nd District; Scofield, 49th District; Sieck, 24th District; Smith, 33rd District; Warner, 25th District; Withem, 14th District.

WHEREAS, Mexico has suffered two major earthquakes and many smaller ones in the past week; and

WHEREAS, at least 3,000 people have died, 11,000 people have been injured, and 300,000 people have been left homeless; and

WHEREAS, the earthquakes also did severe damage to Mexico's capital and most populous city, Mexico City, where 10% of the multi-level buildings were destroyed or damaged;

WHEREAS, the Mexican people have faced this crises with resolve; and

WHEREAS, the people of the United States and the world have responded with generosity in helping Mexico in its hour of need.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE EIGHTY-NINTH LEGISLATURE OF NEBRASKA, SPECIAL SESSION:

1. That the Nebraska Legislature and the citizens throughout Nebraska express our sympathy to the Mexican people for the tragedy that they have suffered.

2. That the Nebraska Legislature and the citizens throughout Nebraska express our admiration for the courage with which the Mexican people have shown in enduring this natural evil.

3. That a copy of this resolution be sent to the Mexican Embassy in Washington D.C.

Mrs. Nelson moved to suspend the rules, Rule 4, Section 6, to permit consideration of LR 3 today.

The motion prevailed.

LR 3 was adopted with 41 ayes, 0 nays, 3 present and not voting, and 5 excused and not voting.

MOTION - Adjournment

Mrs. Morehead moved to adjourn sine die. The motion lost with 16 ayes, 26 nays, 2 present and not voting, and 5 excused and not voting.

MESSAGE FROM THE GOVERNOR

September 25, 1985

Patrick J. O'Donnell
Clerk of the Legislature
State Capitol
Lincoln, Nebraska 68509

Dear Mr. O'Donnell:

Engrossed Legislative Bill 1 was received in my office on September 25, 1985.

This bill was signed by me on September 25, 1985 and delivered to the Secretary of State.

(Signed) Sincerely,
ROBERT KERREY
Governor

RK/jm

MOTION - Advise Governor

Mr. Lundy moved that a committee of five be appointed to wait upon the Governor to advise him that the Legislature has completed its work and is ready to adjourn and to ask if he has any further message for the Legislature.

The motion prevailed.

The Chair appointed Messrs. Nichol, Hartnett, Baack, Abboud, and Mrs. Smith to serve on said committee.

The committee escorted Governor Robert Kerrey to the rostrum where he addressed the body.

The committee escorted the Governor from the Chamber.

UNANIMOUS CONSENT - Member Excused

Mr. Miller asked unanimous consent to be excused. No objections. So ordered.

MOTION - Raise LR 1

Mr. Remmers moved that LR 1 be raised pursuant to Rule 4, Section 3, which requires the Executive Board to report the reference of study resolutions.

Mr. Beutler raised a point of order on whether the Remmers motion was appropriate under the rules for special sessions, and therefore should require a rule suspension.

The Chair ruled that the Remmers motion which was filed pursuant to Rule 4, section 3 was not in conflict with special session rules.

Mr. Remmers asked unanimous consent to withdraw his motion to raise LR 1. No objections. So ordered.

MOTION - Approve Journal

Mr. Pappas moved that the Legislative Journal for the Seventh Day be approved as prepared by the Clerk.

The motion prevailed.

MESSAGE FROM THE SECRETARY OF STATE

September 25, 1985

Patrick J. O'Donnell
Clerk of the Legislature
Clerk's Office
State Capitol

Dear Mr. Clerk:

Please be advised that the Engrossed Legislative Bill Number 1, adopted by the Eighty-ninth Legislature, First Special Session on September 25, 1985 has been approved and signed by the Governor this day at 11:03 o'clock a.m. Please be further advised that the bill has been delivered by the Governor to my office and officially filed at 11:08 on this September 25, 1985.

Section four of the bill provides "since an emergency exists, this

act shall be in full force and take effect from and after its passage and approval according to law".

Finally, I advise you and the members of the Legislature that the bill is a matter of public record in the office of Secretary of State. I hereby respectfully request that you place a copy of this letter of acknowledgment in the official journal for the First Special Session, Eighty-ninth Legislature, 1985.

Respectfully Submitted,
(Signed) ALLEN J. BEERMANN
Secretary of State

MOTION - Adjournment

Mrs. Morehead moved that the Eighty-Ninth Legislature, First Special Session of the Legislature, having finished all business before it, now at 11:43 a.m. adjourn sine die.

The motion prevailed.

Patrick J. O'Donnell
Clerk of the Legislature

CHRONOLOGY OF BILLS
EIGHTY-NINTH LEGISLATURE
FIRST SPECIAL SESSION
1985

LEGISLATIVE BILL 1. By Speaker Nichol at request of Governor

Sept. 19	1	Read first time	6
Sept. 19	1	Referred to Committee on Business and Labor	8
Sept. 19	1	Attorney General's Opinion #128 to Giovanni	37
Sept. 20	2	Notice of hearing (9/20)	48
Sept. 21	3	Placed on General File	49
Sept. 21	3	DeCamp amendment #002S printed	51
Sept. 23	5	DeCamp pending amendment #002S p. 51 withdrawn. Beutler amendment #008S lost. Advanced for Review	53
Sept. 23	5	Placed on Select File. DeCamp amendment #014S adopted. Chambers amendment ruled not within Call - challenge lost. Haberman amendment ruled not within Call - challenge lost. Advanced for Engrossment	58
Sept. 23	5	Correctly Engrossed. ER109 change	65
Sept. 25	7	Nichol motion to suspend rules prevailed. DeCamp point of order ruled not in order. Final Reading w/E 34-10-5	73
Sept. 25	7	President signed	74
Sept. 25	7	Presented to Governor (9/25)	75
Sept. 25	7	Approved by Governor (9/25)	77
Sept. 25	7	Message from Secretary of State	78

LEGISLATIVE BILL 2. By DeCamp

Sept. 19	1	Read first time	6
Sept. 19	1	Referred to Committee on Business and Labor	8
Sept. 20	2	Notice of hearing (9/20)	48
Sept. 23	5	Attorney General's Opinion #131 to DeCamp and Beutler	55

LEGISLATIVE BILL 3. By DeCamp

Sept. 19 1 Read first time 6

LEGISLATIVE BILL 4. By DeCamp

Sept. 19 1 Read first time 6

LEGISLATIVE BILL 5. By DeCamp

Sept. 21 3 Read first time 50

**LEGISLATIVE BILLS
BY INTRODUCERS**

JOHN W. DECAMP

LB

- 2 Appropriate funds to Commonwealth Receiver
notwithstanding that Tort Claim is invalid.
3 Transfer funds to pay Miscellaneous Claim.
4 Appropriate funds to pay Miscellaneous Claim.
5 Appropriate General Funds to Commonwealth Receiver.

WILLIAM E. NICHOL

LB

- 1** To appropriate funds to the Receiver of Commonwealth
Savings Company.

** At the request of the Governor.

**LEGISLATIVE BILLS
REFERRED TO COMMITTEE**

Business and Labor

Chairperson - William Barrett

LB 1 LB 2

SUMMARY OF LEGISLATION**Eighty-Ninth Legislature, First Special Session****The following table shows the final disposition**

Total Number of Bills Introduced	5
Total Number of Resolutions Introduced	3

Approved by Governor, 1:

1e

Indefinitely Postponed, 4:

2 3 4 5

Resolutions Adopted, 1:

LR 3

GENERAL INDEX

ACKNOWLEDGEMENTS

Flags, Nebraska Air National Guard 1

ADJOURNMENT

Sine die 79

APPOINTMENTS

Bartee, Ronald L. - Parole Board 7, 13

Dworak, Don - Liquor Control

Commission 7, 13, 63, 72

Edwards, Steve - Environmental Control

Council 7, 8

Ferer, Lyn V. - Accountability

and Disclosure Commission 7, 12, 63, 72

Finnegan, Deane - Foster Care

Review Board 8, 15

Giovanni, William, Director - Department of

Administrative Services 7, 10, 50, 71

Goldberg, Gary - Gasohol Committee 7, 10

Greenlee, Norm - Gasohol Committee 7, 10

Harris, Terri - Environmental Control

Council 7, 8

Joneson, Jim, Executive Director - Nebraska Commission

on Law Enforcement and Criminal Justice 7, 11

Larson, Elwin - Environmental Control

Council 7, 8

Majors, Betty J. - Environmental Control

Council 7, 8

Mercer, Dick - Environmental Control

Council 7, 8

Morris, Elsie - Environmental Control

Council 7, 8

O'Connor, Ralph - Gasohol Committee 7, 10

Pueppke, Dave - Environmental Control

Council 7, 8

Symonds, Susan M. (Sec. of State appt.) - Nebraska

Accountability and Disclosure Commission ... 49, 57, 66, 63, 72

Tagg, Robert L., Superintendent - Nebraska

State Patrol 7, 9

Torrence, Steven - State Personnel

GENERAL INDEX

87

Board	7, 12, 50, 71
Trowbridge, Lewis E. - Nebraska	
Arts Council	7, 14, 63, 72
Vlasin, John B. - Gasohol Committee	7, 10
Williams, Greg - Environmental	
Control Council	7, 8

ASSISTANT CLERK OF THE LEGISLATURE

Election	3
----------------	---

ATTORNEY GENERAL'S OPINIONS, LETTERS

By Bill Number

LB 1, 1985 Special Session	37
LB 2, 1985 Special Session	55
LB 324, 1985	15
LB 325, 1975	23
LB 662, 1985	17, 25, 45
LB 713, 1985	37
LB 722, 1985	21

ATTORNEY GENERAL'S OPINIONS, LETTERS

By Opinion Number

#101	15
#108	17
#110	19
#120	23
#121	25
#122	26
#124	34
#128	37
#129	42
#130	45
#131	55

ATTORNEY GENERAL'S OPINIONS, LETTERS

By Subject

Commonwealth depositors, provide payment for claim against state (Giovanni #128)	37
Commonwealth receiver, appropriate funds notwithstanding that Tort Claim is invalid (DeCamp and Beutler #131)	55
County judges, impeachment of (Chambers #124)	34

Governor's Call, within the scope LB 2, 1985 Special Session	55
Licensing and regulatory requirements for general building contractors (Hannibal #129)	42
Omaha Tribe of Native Americans and State Gambling and Bingo Laws (Conway #122)	26
Property taxes and sales taxes pertaining to rental equipment (DeCamp #110)	19
Public Meetings Law (DeCamp #120)	23
School consolidation, change provisions for land valuation, provide for merger of Class I school districts (DeCamp #108)	17
(Nichol #121)	25
(Vickers #130)	45
State Government, expenses for; transfer funds from one campus to another campus (John Payne)	21
Unlawful employment practices outside Nebraska (Wesely #101)	15

BIRTHDAYS

Labeledz, Bernice	5
-------------------------	---

CEREMONIES AND PROGRAMS

Flags, Nebraska Air National Guard	1
--	---

CERTIFICATES

Members of Legislature, Special Session	3
---	---

CHAPLAINS

Carsten, Senator Calvin	1
Miller, Senator Jerry	49
Palmer, Dr. Robert	53, 66, 69

CLERK OF THE LEGISLATURE

Election	5
----------------	---

DECLARATION

Special Session	1
-----------------------	---

GOVERNOR

Appointment letters	8-15
Bills, approvals	77
Committees to escort	6, 77
Legislature approve Governor appointments	71-72
Messages	6, 77
Notice of Committee Hearings, Governor appointments	50, 63
Reference Committee reports, Governor appointments	7

JOURNAL, LEGISLATIVE

Approve, 7th Day	78
------------------------	----

LIEUTENANT GOVERNOR

Declaration-Special Session	1
-----------------------------------	---

LOBBYISTS' REPORTS

.....	63
-------	----

MOTIONS

Advise Governor	7, 77
Adjourn Sine Die	79
Approve Journal	78
Committee to escort	7, 77
Raise LR 1	78
Suspend Rules	
Permit consideration now	75, 76
Read final reading	73
Voting rules for Special Session	5

PRESENTATION

Flags, Nebraska Air National Guard	1
--	---

PROCLAMATION

Special Session	2
-----------------------	---

REFERENCE REPORTS, BILLS AND RESOLUTIONS

.....	8
-------	---

REFERENCE REPORTS, GOVERNOR APPOINTMENTS

.....	7
-------	---

REFERENCE REPORTS, SECRETARY OF STATE APPOINTMENT

.....	57
-------	----

RESOLUTIONS, NUMERICAL

- 1 Study failure of State Security Savings
Company and American Savings Company.
(Warner, Vickers, Remmers, Lamb, Nichol) 66, 78
- 2 Request the Governor to call a special session
so spending patterns and cuts can be implemented.
(DeCamp, R. Johnson) 74, 75
- 3 Express sympathy to Mexican people for tragedies
suffered in earthquakes.
(27 senators) 76

RULES, AMENDMENTS, MOTIONS

- Rule 3, Sec. 1(b) - Committees in General 69
- Suspend rules for Special Session 5

RULINGS OF THE CHAIR

- Amendments germane 60
- Challenge the Chair 60, 61
- Point of Order 73, 75, 78
- Within the Call 60, 61

SECRETARY OF STATE

- Appointment letters 49
- Letters and certificates on bills
- LB 1 78